

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

TSHWANE, PRETORIA

10

21 MAY 2019

DAY 38

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PROCEEDINGS HELD ON 21 MAY 2019

CHAIRPERSON: Morning to you all.

ADV JANNIE LUBBE SC: Good morning Mr Commissioner, members.

CHAIRPERSON: I think today is the 21st.

ADV JANNIE LUBBE SC: Mr Commissioner we are ready to proceed on the 21st May. We plan to have three witnesses today, the first one is ready to take the oath, Mr Benedict Mongalo and my colleague Adv Khooe will lead the witness, thank you Mr Commissioner.

CHAIRPERSON: You're familiar with proceedings here?

10 **MR THIPANA MONGALO:** I am.

CHAIRPERSON: And you don't have any objections to taking the oath, nothing has happened in between you coming here the first time and now?

MR THIPANA MONGALO: No.

CHAIRPERSON: Right but you have to take the oath again. Do you swear that the evidence you're about to give will be the truth, the whole truth, nothing but the truth, raise your right hand and say so help me God.

MR THIPANA MONGALO: So help me God.

20 **CHAIRPERSON:** Thank you very much, you can sit down.

MR THIPANA MONGALO: Thank you.

CHAIRPERSON: Yes Ms Khooe?

ADV NKAISENG KHOOE: Thank you Commissioner. Good morning Commissioner and members. Mr Benedict Mongalo is going to be testifying on the SA Home Loans transaction and I'm going to start

leading him now. Am I correct that you have prepared a statement for this Commission?

MR THIPANA MONGALO: That is correct.

ADV NKAISENG KHOOE: Am I correct that you were not coerced to say anything in the statement that isn't true.

MR THIPANA MONGALO: That is correct.

ADV NKAISENG KHOOE: Am I correct ... (intervention)

CHAIRPERSON: I suppose just, and I'm thinking back during my days on the bench, whether that's a leading question or not. Carry on then.

10 **ADV NKAISENG KHOOE:** Thank you Commissioner. I believe at the beginning we're allowed to lead him just to get him to start with his statement. And you have not been coerced to make this statement?

MR THIPANA MONGALO: That is correct I haven't been coerced.

ADV NKAISENG KHOOE: Alright thank you. You can start with your statement from paragraph 1.

MR THIPANA MONGALO: I am an adult male currently employed by the Public Investment Corporation SOC Limited PIC as a Fund Principal in the Impact Investing Division. I've been employed by the PIC since September 2012 and have held various job titles and responsibilities in
20 Risk, Private Equity and Impact Investing divisions.

My qualifications include a Bachelor of Commerce Accounting degree; a Financial Services Diploma in Credit Risk, and a Master of Business Administration MBA degree.

I have been requested by Mr Thinus Rheeder a staff member of the Judicial Commission of Inquiry to provide a statement providing a

detailed account of my knowledge of activities relating to the issue of transaction fees in the SA Home Loans transaction. The purpose of this statement is therefore to detail my knowledge on the issue of fees and activities that took place in the SA Home Loans transaction.

In providing the facts contained in this statement, I have relied on certain documents that were prepared for submission to the relevant committees in relation to the SA Home Loans transaction, e-mail correspondence between myself and the relevant parties and also documents submitted by the funding applicants and other related parties.

On the background in providing a detailed account of the issue of fees it is worth providing a background on the two main transactions done between PIC and SA Home Loans which are detailed below. The business relationship between PIC and SA Home Loans started in 2013 when PIC on behalf of the Government Employees Pension Fund and a broad-based black economic consortium Bolatja Hlogo Consortium or BHC acquired 50% equity holding in SAHL Investment Holdings. SAHL is the ultimate parent company of SA Home Loans.

BHC itself is a consortium led by Mr Kholofelo Maponya and was funded by PIC to acquire their 25% equity portion in SAHL.

MS GILL MARCUS: Sorry can I just ask you there, what did the PIC pay for that 50%?

MR THIPANA MONGALO: It paid around R480 million Commissioner.

MS GILL MARCUS: And how much did the funding then to Maponya was half of that, was that provided by the PIC?

MR THIPANA MONGALO: Yes it was for the same amount so it was the PIC's equity of about 480, I can exactly the same, I mean roughly it was about R480 million ... (intervention)

MS GILL MARCUS: For the 50%?

MR THIPANA MONGALO: For the 25%.

MS GILL MARCUS: So okay so for the 50% it would have been double that?

MR THIPANA MONGALO: Double that yes, that's correct.

MS GILL MARCUS: So PIC paid double and then Maponya was 480
10 million for its 25%?

MR THIPANA MONGALO: Yes he was funded ... (intervention)

MS GILL MARCUS: And that was a loan from the PIC?

MR THIPANA MONGALO: That is correct.

MS GILL MARCUS: And did Maponya put in any of their own finance?

MR THIPANA MONGALO: Not, no not to my knowledge. I must just say Commissioner that I was not involved in the transaction so I got involved in the second subsequent transaction but to my knowledge no there wasn't any funding that was put.

MS GILL MARCUS: And was that being serviced?

20 **MR THIPANA MONGALO:** It is being serviced, yes.

MS GILL MARCUS: Okay thanks.

MR THIPANA MONGALO: As part of the transaction PIC nominated Mr Roy Rajdhar and Wellington Masekesa to serve as non-executive directors of SAHL.

The second transaction entailed PIC on behalf of the Government

Employees Pension Fund advancing debt funding package totalling R10.5 billion to SA Home Loans through their ringfenced managed insolvency remote special purpose entities. The total facilities which were for a specific purposes was paid as follows:

1. South African Mortgage Fund it's a ringfenced entity so R5 billion;
2. South African Mortgage Fund 1 Pty Limited R4 billion and;
3. The South African Housing Development Fund a DevFund R1.5 billion.

10 The issue of fees only arose on the second transaction and consequently this statement deals with the second transaction.

Litigation ... (intervention)

MR EMMANUEL LEDIGA: Sorry, do you know if there's a difference between 9.1 and 9.2 those different funds?

MR THIPANA MONGALO: Yes so they were for specific purposes, 9.1 which is the R5 billion was a funding line for SA Home Loans to advance funding to the Government employees. The second one which is the R4 billion it was divided into two, there was R2 billion for them to on lend to the affordable housing segment and then the other R2 billion
20 was towards the, what we call the traditional market, their normal lending business.

Paragraph 11 ... (intervention)

MR EMMANUEL LEDIGA: Sorry, sorry and then 9.3 what was the difference there, what was it aimed at?

MR THIPANA MONGALO: So 9.3 it's a development fund, this is a

DevFund that was established for SA Home Loans to lend to the affordable housing developers, property developers.

MR EMMANUEL LEDIGA: (Inaudible – microphone not switched on) ... it's a developers fund?

MR THIPANA MONGALO: That is correct.

MR EMMANUEL LEDIGA: For developments?

MR THIPANA MONGALO: Yes.

MR EMMANUEL LEDIGA: Lending or shares or the equity because you can lend them, you can lend to them and then you can inject the equity
10 also?

MR THIPANA MONGALO: Lending.

MR EMMANUEL LEDIGA: In those projects.

MR THIPANA MONGALO: It was lending, all debt facilities yes.

MR EMMANUEL LEDIGA: Okay like Nedbank would lend to projects?

MR THIPANA MONGALO: That is correct.

MR EMMANUEL LEDIGA: Okay.

MR THIPANA MONGALO: Paragraph 11, it is worth noting that the matter of fees in question is currently subject of litigation initiated by Matome Maponya Investments Pty Limited or MMI. The summons which
20 were served on PIC are attached as annexure A.

Origination of the transaction: my involvement in the transaction commenced on the 29th September 2014 when I received an e-mail from the CEO's office to work on a debt funding package for SA Home Loans. The e-mail to myself was pursuant to the proposal received from the then Chief Financial Officer of SA Home Loans Mr Rob Keslo. The e-

mail correspondence is attached as annexure B.

The transaction approval process, so in line with the unlisted investment approval process the transaction for SA Home Loans was considered by the following committees; the Portfolio Management Committee Unlisted Investments on the 18th November 2014 that's PMC1; it then was considered by Portfolio Management Committee Unlisted Investments on the 9th April 2015 that's PMC2 and it was subsequently approved by the Investment Committee on the 14th July 2015 with a subsequent variation that was done on the 17th December 10 2015. The extract of the minutes of PMC deliberation is attached as annexure C and C1 respectively whilst the Investment Committee resolution and the subsequent variation of conditions presented to the Committee is attached as annexure D and D1 respectively.

As indicated in the attached resolution the Investment Committee approved the transaction subject to upfront fees of 50 basis points of the total debt commitment, so that's excluding DEF Fund commitment being charged. Considering the total debt commitment of R9 billion the upfront fees amounted to R45 million exclusive of VAT. The amount in question was levied and capitalised onto the loan facilities on the 20 effective date of the facilities.

MS GILL MARCUS: So just to be clear that R45 million is equivalent to the .5%?

MR THIPANA MONGALO: That is correct.

MS GILL MARCUS: Okay.

MR THIPANA MONGALO: Discussion on the fees; so in executing the

transaction for SA Home Loans I've dealt and negotiated commercial terms extensively with SA Home Loan staff in particular the CFO or the then CFO Mr Rob Kelso. The proposed upfront fee which comprised of the arrangement and the underwriting fee was the figure negotiated downwards from an initial 100 basis points.

During the preparation for the PMC2 submission there was an internal discussion about sharing the fee with BHC or with Bolatja Hlogo Consortium which culminated in the proposal to PMC2 that the proposed fees be shared equally with BHC. The fee sharing proposal
10 was however subsequently removed. I do not have the recollection of the circumstances around the removal of this proposal in the final submission to the investment committee. I could however assume that perhaps it was due to the unavailability of the explicit mandate with BHC or indicative terms of that arrangement, if any. Accordingly the final approval by the investment condition included a condition that all the upfront fees charged are payable to PIC in its capacity as the lender.

The finance agreements for all the transactions was signed on 21st December 2015. The issue of the fees resurfaced with MMI contending
20 that their fees amounting to R45 million payable to them, albeit there was no written mandate and/or agreement.

MS GILL MARCUS: Sorry can I just ask you a question there?

MR THIPANA MONGALO: Yes sure.

MS GILL MARCUS: If the agreed loan was at .5% why would MMI be asking for fees of R45 million because that would be the whole fee? Is

he still assuming or are they still assuming that it was a 1% fee and second of all would it be normal, if you looked at your paragraph 17, would it be usual for there to be a discussion about fees being paid to somebody where there isn't a written agreement or an understanding at the outset of who has what and what fees should be shared and so on, why would this even come if the PIC's documentation and arrangements were clear? Because this seems to me to be a lot of who said what, so I don't understand the R45 million if the lending agreement was at .5 it should, if he's claiming half it should be R22.5 million not 45.

- 10 **MR THIPANA MONGALO:** Yes Commissioner so I deal with this matter later in statement around who played what role but I think the issue of the R45 million as I've indicated we negotiated a fee which was at the time 100 basis points which would have been effectively R90 million so it may well be that the claim of the R45 million came from the assumption that we are collecting, we are collecting 100 basis points. But the agreement at this stage they were completed and they were explicit in that it was 50 basis points. So in essence what is being claimed it's the full amount that has been charged.

MS GILL MARCUS: And then, well sorry go on.

- 20 **MR THIPANA MONGALO:** Yes, so on paragraph 19, following an internal discussion with Mr Roy Rajdhar my line manager, it was agreed that to the extent that the services rendered to PIC by MMI we should approach the initial sanctioning committee being the PIC Investment Committee to seek approval. In this regard the view was that the fees end on the transaction will be paid to MMI and accordingly PIC would

merely act as a collecting agent.

MS GILL MARCUS: I'm not sure if you can answer it or whether it's Mr Rajdhar who needs to answer it but that sounds quite extraordinary that you take no fees whatsoever and were there actually services rendered?

MR THIPANA MONGALO: So Commissioner again I deal with this issue later on in the statement, I think the view that the PIC ... (intervention)

MS GILL MARCUS: I don't refer to the, I've read the statement, I know what you're referring to, I'm asking you to explain it in relation to
10 saying that you're giving up any fees in relation to MMI, were you convinced that there were services rendered?

MR THIPANA MONGALO: Well I think if there were services rendered it would have, I would say that it would most probably be a referral fee but even in that case we have not been able to prove the referral given that this transaction, as I've indicated, was originated by the SA Home Loans team. So if we're talking about the arrangement mandate, the arrangement mandate is quite clear on what the arranger needs to do to facilitate a transaction and we're of the view that it was not an arrangement mandate. Firstly there wasn't an explicit arrangement
20 mandate which was signed and secondly there wasn't a proof of rendering those services. So what we have charged and state as PIC we have charged you know participation fee which was arrangement and underwriting fee because we underwrote the entire tranche of the facility and what is being claimed here or based on the invoice that has been provided is that this are arrangement fees and arrangement fees

in the ordinary costs are paid by the borrower because the borrower would have given the mandate to the arranger but not the lender.

MS GILL MARCUS: I understand that, my query is how you agree that the transaction, that the fees earned will be paid to MMI and the PIC would merely act as a collecting agent, I don't know how you come to that agreement on the basis on the information that you have just reiterated?

MR THIPANA MONGALO: Ja so ... (intervention)

MS GILL MARCUS: Because you're saying you agreed that, I just don't
10 understand why but maybe continue and it will come clearer.

MR THIPANA MONGALO: Okay paragraph 20. We prepared a memo for Investment Committee submission on the 26th February 2016 and that specific memo never served at the Committee as it was not recommended by the CEO.

MS GILL MARCUS: Now that memo would have reflected paragraph 19's agreement?

MR THIPANA MONGALO: That is correct, yes. To my recollection the reasons for not recommending the submission to the Committee included the fact that the PIC did not have a mandate with MMI to
20 render the specific services and even if there as a mandate it would be regular for PIC as a lender to pay an arranger of the facilities. The view held was that if any arrangement was to be paid then the borrower should pay it.

ADV NKAISENG KHOOE: Sorry at this point in time I need to ask the Commission, I beg leave to hand up the memo, I received it a bit late.

CHAIRPERSON: What would be the next annexure Ms Khooe, H? Will the next annexure be H?

ADV NKAISENG KHOOE: It will be Annexure H. Now you just explained to the Commission that this memo that was written was not recommended by the CEO. Now my question is who had instructed you to draft a memo in the first place?

MR THIPANA MONGALO: So I had a conversation with my line manager, Mr Roy Rajdhar and we were served with the invoice and I think our view was that if there is a fee to be paid then such fee needs
10 to be deliberated upon by the Committee and we submitted a memo to that effect.

ADV NKAISENG KHOOE: Was the CEO aware of this?

MR THIPANA MONGALO: The CEO was given the memo and as I've indicated he did not recommend the submission of the memo. He actually wrote on the memo that it's not recommended, I think on the last page of the memo he indicate his signature there.

ADV NKAISENG KHOOE: Thank you, you can continue.

MR THIPANA MONGALO: Okay so from paragraph 21, we have been
20 provided with the minutes of the deliberations of the Board of Directors of SA Home Loans and the legal opinions that were considered at the time. The documents were provided to PIC by Mr Maponya as part of the negotiation of the fee dispute raised by Mr Maponya. Based on the information provided, my understanding is that SA Home Loans Board deliberated on the issue and, resolved that there is no basis to pay MMI any fees.

On or around the 29th April 2016 following an internal discussion I was requested to prepare a cession of fee letter to be issued to SA Home Loans. The effect of that letter is that SA Home Loans would pay the fees to MMI. My understanding is that the decision was as a result of the discussion held between the PIC directors and the CEO of SA Home Loans.

MS GILL MARCUS: Who asked you to prepare that cession of fees letter?

MR THIPANA MONGALO: Commissioner it was a discussion with Mr
10 Rajdhar. I then drafted the cession letter as requested and asked the legal department to vet the letter. Once the letter was vetted it was signed by the CEO and sent. The cession letter is attached as annexure E.

Following the issuing of the cession letter on the 5th May 2016 we received an e-mail from Mr Maponya indicating that the Company Secretary of SA Home Loans insist that the Board of the company has to approve the cession by PIC which he considered irregular and improper, should be improper. My understanding was they needed to approve the payment on the back of the cession letter issued by PIC
20 given that it was effectively regarded a related party transaction. He requested that PIC get clarity on the legal standing and reasoning.

The e-mail was forwarded to Mr Nesane, Mr N S Nesane the Executive Head Legal Counsel who indicated that the Board of SA Home Loans should seek advice from its own lawyers and not PIC legal. The e-mail correspondence is attached as annexure F.

On the 9th May 2016 Mr Nesane and myself had a discussion with the CEO of PIC. He indicated that there was a bilateral meeting with the representatives of Standard Bank who are co-shareholders in SA Home Loans and the understanding was that there is no mandate between SA Home Loans and MMI and accordingly there was discomfort with the company paying the sought fees. In view of the discussion and the understanding that no services were rendered by MMI to either PIC or SA Home Loans it was decided that the cession be withdrawn or rescinded.

10 **ADV NKAISENG KHOOE**: Sorry who made that decisions?

MR THIPANA MONGALO: So it was the discussion with the CEO, it was myself, Mr Nesane and the CEO Dr Matjila. The rescindment letter which is attached as annexure G was issued on the 10th May 2016 and the reason for rescindment were stated as follows; to the extent that there is no funding arrangement mandate whether expressed tacit or otherwise between the servicer or the borrowers and MMI or any external arranger the lender hereby wishes to withdraw and rescind the letter and/or any other correspondence in relation to the arranging fees.

20 From the documentation provided by Mr Maponya which included minutes of the deliberations of the SA Home Loans Board on the same day, the Board of SA Home Loans had an extraordinary meeting to discuss the same issue and it was noted that the cession withdrawn, that all invoices rendered by MMI to SA Home Loans would be withdrawn.

To date no payment has been made by PIC to MMI albeit there have been numerous letters and an invoice from MMI received and recently the court summons demanding the fees. My understanding of the litigation is that MMI contends that the arranging fees are due and payable by PIC to MMI owing to a tacit or verbal agreement between the parties.

CHAIRPERSON: Ms Khooe did you manage to have a look at the particulars of claim in this case?

10 **ADV NKAISENG KHOOE:** I did, I have been provided with the particulars of claim and from the particulars of claim the point of contention is that they have, MMI is entitled to the fees according to the cession that was agreed between them.

CHAIRPERSON: But anyway that dispute is not for us.

ADV NKAISENG KHOOE: Indeed. Mr Commissioner that concludes the testimony of Mr Mongalo.

CHAIRPERSON: Yes it seems there are no further questions Mr Mongalo you are excused and thank you for your time and giving your evidence before us.

MR THIPANA MONGALO: Thank you Commissioner.

20 **CHAIRPERSON:** Thank you, you're otherwise excused.

ADV NKAISENG KHOOE: Mr Commissioner Mr Rajdhar is here and he's ready to proceed with his testimony.

CHAIRPERSON: Yes, Mr Rajdhar, you are also familiar with where you're going to be but unfortunately we have to have you take the oath. Do you swear that the evidence you're about to give will be the truth,

the whole truth, nothing but the truth, so help me God.

MR ROYITH RAJDHAR: So help me God.

CHAIRPERSON: Thank you very much, you may be seated.

MS GILL MARCUS: Mr Rajdhar, before you start with this testimony can I take you back to last week? There were a couple of questions that I had that I didn't finalise myself so my apologies for that.

I just want to understand a little bit around this transaction that was paid. The question for me was – the transaction fee that the PIC paid a 1% transaction fee and which was supposed to be also – the
10 PIC was supposed to receive a transaction fee of 1% which was about 23.5 million that related to the deals done with MMI and it was split with Maponya and the PIC. Can you explain why it was split?

MR ROYITH RAJDHAR: Through you, Commissioner, when the transaction was done we had agreed with Mr Maponya that we will agree on who the service providers will be appointed for technical due diligence, the financial due diligence evaluation. But, however, we expect him to pick up the cost until the transaction until the transaction is concluded at which point we would pay him the 1% - I think it was roughly 11 – I think it was 11.75 million, if I'm not mistaken, as a
20 recovery reimbursement of the costs on his side and we would take the normal participation fee that we charge, so we also took a fee. So that was the arrangement with him.

MS GILL MARCUS: But surely the PIC earns a fee that is for doing the job and the question for me would be it just – how often would you do this, that you have a transaction fee? I mean, there are costs involved

but that's usually part of what the loan is and then it is repaid or whatever. This is actually part and parcel of you providing – the PIC providing the funding and you get a fee for doing the transaction. So why would the beneficiary of the loan get a fee? A transaction fee? I can understand them having incurring costs and then that becomes part of the loan but why would you split your fee? So, in essence, you're getting half the funding that you would normally get or is this something you do more regularly with other people? How often do you split fees?

MR ROYITH RAJDHAR: Through you, Commissioner, no, in this
10 particular case we had agreed that Mr Maponya must carry the costs of the transaction pending the approval. So the financial due diligence , the technical due diligence and the valuation. So he had paid for that. So when we had paid him the fee it was also for the recovery of those costs that he carried in his capacity, MMI.

So the fee that – and then the fee that we took basically carries also our internal costs for ourselves which is normal but in this case it was a reimbursement for costs that he would have incurred and taking on the risk because if the transaction was not approved we would not refund him the money.

20 **MS GILL MARCUS:** In your document, your engagement letter, paragraph 3.2.2”

“MMI would be responsible for expenses.”

Why would that change?

MR ROYITH RAJDHAR: Through you, Commissioner, in this particular instance we didn't want to carry the risk that if the transaction was not

approved that we are sitting with the costs. So we made him carry the costs first and we had agreed that he'll be entitled to a fee as a recoupment for those costs.

MS GILL MARCUS: So do you do this normally with transactions? It's quite often that you don't – you say you earned a fee of 1% but in fact you split it with the person who is getting the loan, or the entity that's getting the loan.

MR ROYITH RAJDHAR: Commissioner, so most often what we would do is that we would charge a fee, the entire fee, but the fee that we
10 charged the client, we'll carry the cost but we'll recoup it from the fees that we've charged the client. So that's the most common way we would do it. In this particular instance we took the view, let him carry the risk first instead of us carrying the risk. But in most cases we carry the risk. In this case we said – we made him carry the risk.

MS GILL MARCUS: So he's paid for carrying the risk to get his own loan?

MR ROYITH RAJDHAR: Well, for the expenses that were incurred. So
20 if the loan was not – the transaction was not approved, whatever costs he incurred in the valuation and the various due diligences was for his account.

MS GILL MARCUS: Perhaps you want to come to the SA Home Loans.

ADV NKAISENG KHOOE: Yes, I do, Commissioner. Mr Rajdhar, you can start with your testimony for this.

MR ROYITH RAJDHAR: "My name is Royith Rajdhar, I'm an adult male.

I was employed by Public Investment Corporation on 1 October

2009, Executive Head Impact Investing. I was senior fund principal at the time a 9 billion facility was paid to SA Home Loans for the purposes of granting housing loans. I am non-executive director of SA Home Loans and SAHL Investment Holdings. I was appointed on 13 June 2014. The investigating team of the Commission of Inquiry requested I provide the Commission with the facts in relation to 0.5% on R9 billion fee of R45 million plus VAT, demanded by Matome Maponya (Pty) Ltd pursuant to PIC approving a R9 billion loan facility to SA Home Loans.”

10

MS GILL MARCUS: Sorry, what is the PIC’s shareholding in SA Home Loans?

MR ROYITH RAJDHAR: PIC shareholding is 25% and we had funded the BHC Consortium which is led by MMI or Mr Maponya for the balance of the 25%.

MS GILL MARCUS: So it’s 25% each?

MR ROYITH RAJDHAR: It’s 25%.

MS GILL MARCUS: And that’s the same amount that was reflected earlier, 960 million.

20 **MR ROYITH RAJDHAR:** Yes, 960 million, 480 million a direct equity by ourselves and a loan to the BHC Consortium of 480 million.

MR EMMANUEL LEDIGA: Just a question there, so that amount, was it injected into the company or it was a sale of shares?

MR ROYITH RAJDHAR: It was a sale of shares where J P Morgan had held the balance of the 50% and so this was an acquisition of the 50%

shareholding held by J P Morgan.

“Unless otherwise stated, whenever mention is made of PIC refers to PIC acting as agent on behalf of the Government Employee Pension Fund or the GEPF. MMI requested payment of 45 million plus VAT for work done in conceptualising the GEPF member benefit an affordable housing programme and facilitating the funding of R9 billion. MMI claimed the fees from both PIC and SA Home Loans but the latter parties have denied liability and the matter is currently subject to litigation.”

10 **MS GILL MARCUS**: When you say latter parties have denied, both of them?

MR ROYITH RAJDHAR: Both PIC and SA Home Loans.

MR EMMANUEL LEDIGA: Did the company sort of provide documentation about this concept, you know, the benefit and affordable housing programmes? Did they take you through the concept and provided documents on that concept?

MR ROYITH RAJDHAR: Through you, Commissioner, the consortium did provide us with documentation but the one other part I wanted to add to this, which I'd omitted in my statement is that Mr Maponya had
20 mentioned that in his discussions with Dr Matjila at the outset of the transaction where the 480 million or 960 million was [indistinct] when there was an acquisition of the J P Morgan shares that the understanding was that they would share – initially he had come to PIC to fund the outright purchase of J P Morgan and PIC not to have a shareholding but Dr Matjila had mentioned that that was not how he

wanted to see the – he wanted PIC to have 50% of that share, that's the 25 and so there was an understanding that going forward that they would share in even well, whatever fee was earned, that's a – I have not verified that but that is what was told to me by Mr Maponya.

MS GILL MARCUS: Did you ask Dr Matjila about that?

MR ROYITH RAJDHAR: No, I did not verify that with Dr Matjila.

MS GILL MARCUS: And at what point – at any point in time did you ask Dr Matjila what the arrangement was with Mr Maponya?

MR ROYITH RAJDHAR: Look, in later times when this thing became
10 the subject of dispute Dr Matjila indicated that he – I mean, he doesn't have the authority in any event to agree anything because that is always subject to a committee but what he did mention was that the understanding was that Mr Maponya would come into the transaction on the understanding that they're there to grow it and to look at moving into the affordable housing space as well as providing products for GEPF members but that's all he had mentioned but he was quite clear that he did not agree but this is something that we only – that was only later on in my discussions with him that he mentioned it.

MS GILL MARCUS: So in essence he said it was about the business
20 case rather than about any agreement about fees and whatever.

MR ROYITH RAJDHAR: Yes, he said he did not agree any such thing.

MS GILL MARCUS: And the 45 million, as we heard earlier, is a 1% of the total 9 billion, not the .5% or the 50 basis points.

MR ROYITH RAJDHAR: Yes. Through you, Commissioner, yes, it was 1%. However, when the matter was discussed with Mr Kevin

Penwarden who is a CEO of SA Home Loans as well as Mr Rob Kelso, was a CFO at the time, they felt that 1% would be too high and it would defeat the purposes of affording – of providing a competitive rate for GEPF members because that would have to be imputed in the pricing. So hence they had negotiated and eventually that had come down to a .5%.

MR EMMANUEL LEDIGA: Paragraph 5 still talks about the work done, so were there documents, you know, sort of produced by the company saying this is the work done by us and you need to pay us something
10 for that, the concept.

MR ROYITH RAJDHAR: Documentation was provided but there was never an agreement that that would be the basis of payment of the 45, but they would undertake that work but we never concluded any service level agreement with them or any engagement letter with the company.

“This statement is intended to provide the sequence of events which has occurred in relation to this fee demand of 45 million. On 12 September 2014 the CEO of SA Home Loans, Mr Kevin Penwarden, the CFO at the time Mr Rob Kelso of SA Home Loans met with Dr Daniel Matjila, Mr Wellington Masekesa and
20 I at PIC offices to discuss the funding line referred to above. Subsequent to these discussions documentation was sent to PIC by SA Home Loans. Mr Benedict Mongalo from the Impact investing division led the investment team on the transaction. On 18 November 2014 the portfolio management committee of unlisted investments granted permission for the transaction to

proceed to the due diligence space. After the due diligence was completed the investment team compiled an appraisal report. During this due diligence process Mr Maponya indicated to me that he had agreed with the PIC CEO that he would be entitled to half the fees charged on the transaction for the work that had been done. I communicated this to Mr Benedict Mongalo and he accordingly included such information in the appraisal report.”

MS GILL MARCUS: Sorry, did he include - in essence what is
10 confusing for me about this is, you say here included it in the appraisal report but was that something that you said this is what he is claiming or was it something that you said, look, this is what we had agreed because I'm not sure from that wording whether what you said to me once you spoke to Mr Mongalo that it was to be conveyed that this due. I mean, was it something that in the documentation you actually said this is what he is claiming but there is no foundation to it, we are simply informing you that this is a claim or did you say this is a claim that we must be aware of?

MR ROYITH RAJDHAR: I had mentioned to him what Mr Maponya had
20 mentioned to me that the had had – that he had agreed with Dr Matjila that there would be this fee sharing arrangement. That is what I had indicated to Mr Mongalo.

MS GILL MARCUS: So anybody is able to say I had a conversation with the CEO and I can claim 40 million, 50 million, a 100 million or whatever it is that I want and you then put it into documents without

any documentation to show it?

MR ROYITH RAJDHAR: Commissioner, in this particular instance we had put it into a document but it's serving at a committee where Dr Matjila is a member but also I'm mentioning it to Mr Mongalo normally - because he's leading the transaction team I don't know whether he had spoken to Dr Matjila about this but it is something that would have in any event been – Dr Matjila would have been aware of when it came to PMC2.

MS GILL MARCUS: What I'm trying to understand, is if anyone came to
10 you to make that assertion why would you give it validity? Is it something that happened quite often that there was a verbal agreement with Dr Matjila that somebody can come along and say I agreed this with him and it's worth 45 million to me and then it's given as fact. Why would that – how would that be accepted into any discussion without documents, without letters, without formality. This is not small money. It might be small to the PIC but 45 million is not small money. So I don't understand how, unless it is a frequent occurrence, that people can say I've had a discussion with the CEO and therefore it's become normal for you to include it because that happens often. If this
20 is a rare occasion it would have been something that you simply say hang on a second, give me the documentation and you dismiss it out of hand without documentation. So I'm trying to understand why this got the legs it got.

MR ROYITH RAJDHAR: Commissioner, firstly I'd like to say that it is not a frequent occurrence, it was just information which Mr Maponya

had mentioned to me and given that Mr Mongalo is the leader on the transaction had communicated to him, I would have taken it that he would either have had discussions with Dr – and/or this would have been tabled at the PMC. So but I did not have any one-on-one discussion with Dr Matjila to verify that and I can't speak for whether the investment team had valued it with Dr Matjila.

CHAIRPERSON: If I understand you correctly you say you assumed that Dr Matjila would be at the committee meeting that would discuss the issue?

- 10 **MR ROYITH RAJDHAR:** Yes, he would normally be the Chair, he would be the – he is the Chair of the portfolio management committee. Chair, if I may continue.

“To the best of my recollection at that stage Mr Maponya was under the belief that the fee was 1% of the loan facility. It had in fact been 1% at the outset but SA Home Loans had negotiated it down to 0.5%.”

MS GILL MARCUS: Did you advise him of that?

MR ROYITH RAJDHAR: Not to my knowledge.

- 20 “The appraisal report was presented to PMC unlisted investments on 9 April 2015. The terms and conditions of the funding and the proposed fees was accepted. PMC requested that that the appraisal report modified to the extent necessary will be sent to PIC's investment committee for approval. The appraisal report was amended. However, significantly, whilst the 0.5% fee was still proposed the report did not state the

recipient of the fee. However, usually when PIC is the recipient of any fee the report does not usually state this as it is taken as given that it is for the benefit of PIC. The IC approved the loan facility on 14 July 2015.”

MS GILL MARCUS: Sorry, do you know if there was any discussion in that committee meeting about this claim?

MR ROYITH RAJDHAR: Through you, Commissioner, in the meeting of the IC, that the fee it was silent, it was just within the table of all the terms and conditions, it had just had an upfront fee of .5% was payable
10 but usually in a table of that sort it is taken as given that it is to PIC.

CHAIRPERSON: Does this mean that the investment didn't know who this fee was going to?

MR ROYITH RAJDHAR: It would have been understood that it is to GEPF – well, to PIC on behalf of GEPF. So when the approval was done, there's an approval where there's no fee to approved to MMI, that's the approval, that the final approval is an approval of a fee of 0.5% payable to PIC.

MS GILL MARCUS: It is .5% I mean, 50 basis points because just now you said .25.

20 **MR ROYITH RAJDHAR**: Oh, .5.

MS GILL MARCUS: .5?

MR ROYITH RAJDHAR: .5.

MR EMMANUEL LEDIGA: So one can say that it was assumed that this fee goes to the PIC given the convention basically.

MR ROYITH RAJDHAR: Yes, it is to the PIC because even in the

carrying out of the legal agreements it is stated – there it stated explicitly to the PIC.

MS GILL MARCUS: So Dr Matjila was in that meeting and there was nothing reflected in decisions that would say this fee is split or it is going to a third party, it was absolutely taken for granted as the normal course of events, a 50 basis point fee would be going to the PIC.

MR ROYITH RAJDHAR: Yes, I'm unable to confirm whether he was in the meeting but that we can check the minutes whether he had attended.

10 “The legal agreements with the main agreement being the master loan facility agreement was concluded on 24 December 2015. Clause 16.7 of this agreement states the following insofar as the fees are concerned. The borrower and servicer shall pay to the lender and arranging an underwriting fee in the amount equal to 0.5% of the GEPF facility which fees shall be exclusive of VAT. The arranging fee and underwriting fee shall be due on the effective date and may be capitalised to the total capital and be repayable in accordance with the priority of payments. It is clear from the wording of this clause

20 that the fee is payable to GEPF and not any third party. Also, the proposed fee is intended to be for the account of the borrower, it is considered to be part of the borrowing and not a cost for the GEPF. Mr Maponya told me that when he enquired with Mr Mongalo about the fee it was pointed out that the PIC approval did not include any fee payment to MMI. I initially

thought that the fee was approved at the IC but later confirmed Mr Mongalo's understanding."

MS GILL MARCUS: Why did you think that? What led you to think that the fee had been approved? It wasn't in the memo to say approve the fee to Mr Maponya?

MR ROYITH RAJDHAR: Yes because normally what would happen is that when we take the appraisal report to the PMC, usually when there's not much – or not changes proposed, all we would do is we would submit the same report to the investment committee without
10 modification. So I think even myself because I recall at some point I had been under the impression that it was in that report but it wasn't.

"In order to address this matter, Mr Mongalo prepared a submission which both him and I signed for the PIC's investment committee to indicate the fee of 0.5% payable to the GEPF had been intended to be the benefit of MMI."

MS GILL MARCUS: On what did you base that? Everything that you've said so far, on what did you base writing a letter of that nature to say that it is for the benefit of MMI, because he said so?

MR ROYITH RAJDHAR: Through you, Commissioner, no, it goes back
20 to the first submission to PMC where it was agreed that the fee would be 50/50. That was the understanding. Now Mr Maponya is still claiming that that 50 basis points is due to him. Remember, he is still under the impression that it is 1% and so ...[intervenes]

MS GILL MARCUS: But you're endorsing and saying indicate that the fee of .5% is payable, so you're endorsing his understanding of 1%. I

mean, if he is correct and it doesn't belong to him, which is doubtful, from what you've said so far, but that is for a court now to decide, but it should only be of what the agreement was which is if you were endorsing and saying it was 1%, it was not agreed at that, we finalised at .5, if he's getting half it it's .25, but you're endorsing here, you say a .5% payable fee. Because he says so? I want to be in those kind of positions, I'm sure many others, we come along and say so.

MR ROYITH RAJDHAR: Commissioner, as I mentioned at the outset, this was based on the understanding that I'm accepting that the
10 discussion between him and Dr Matjila, which I had mentioned at the outset, was that the fee would be shared 50/50 and it was on the basis of 1%.

MS GILL MARCUS: But before you write a letter don't you then go and check with Dr Matjila? I mean, I don't – this is not credible to me, I'm sorry. It's either something that you say it's given because somebody says so, you don't – you go and endorse a 45 million fee without checking with Dr Matjila whether there was any validity to it given that you have submitted to the meeting where he is present.

MR ROYITH RAJDHAR: Through you, Commissioner, as I mentioned
20 earlier, is that I indicated I passed on what information was given to me, to the transaction team and specifically Mr Mongalo. So usually what would happen, I would not normally be the one engaging to validate this, so as I said, I don't know whether there was a discussion with Dr Matjila on the fee but it having served at the PMC and the fee was accepted there that we said we'll take it with full – with the

disclosing to the IC what exactly happened and what is being said and it's for the IC to decide whether to approve or not approve because we had no basis to engage with Mr Maponya or discuss anything on fees because strictly speaking there was no approval at the investment committee.

10 “However, the CEO did not recommend the submission to the IC here presumably be any payment of fees was for the account of the borrower and therefore had no financial impact in terms of PIC's delegation of authority framework. However, would be done presuming this is something that Dr Matjila would need to confirm.”

But shortly after that memorandum I think it was on the – I think it was on the 26 February but on the 27 February, the CEO advised Mr Mongalo by email that SA Home Loans should pay MMI directly and I attach that as annexure G.

20 “Accordingly, Mr Mongalo consulted PIC's executive head of legal counsel, Mr Ernest Nesane who advised that the master loan facility agreement would have to be amended to take this into account. Thereafter, Mr Nesane had engaged the PIC appointed legal firm on the transaction, DM5, to prepare an addendum to the master loan facility agreement but the parties could not reach agreement on the wording of the amendments and consequently no addendum was done.”

MS GILL MARCUS: The parties being Home Loans?

MR ROYITH RAJDHAR: Being SA Home Loans ...[intervenes]

MS GILL MARCUS: And the PIC.

MR ROYITH RAJDHAR: And PIC.

“Based on an email correspondence between representatives from SA Home Loans, PIC and MMI, there was discussion that the fees payable to GEPF in terms of clause 16.7 of the master loan facility agreement could be effected through the clause dealing with cession as stated in clause 16.13.2. This clause states as follows:

10 ‘GEPF or any person or entity to whom its rights and/or obligations are ceded, delegated and/or assigned in terms of hereof shall be entitled on written notice to the borrower and SA Home Loans to cede, delegate and/or assign all or any of its rights and/or obligations hereunder either absolutely or as collateral security to any other persons or entities notwithstanding that the cession or assignment to more than one person or entity may result in a splitting of claims against the borrower and/or SA Home Loans and on any such session of assignment taking place, the borrower and SA Home Loans shall if so required by any cessionary make all payments the
20 right to received which have been ceded to such cessionary and perform all obligations hereunder. The rights to which have been ceded to directly to such cessionary.”

Essentially as pertains to the fees in the clause allows for GEPF for its designate to request the borrower or SA Home Loans to pay the fees to a third party specified by the GEPF or such designate.

On the basis of this Clause 16.3.2.1, 29th April 2016 PIC issued a letter to the CEO of SA Home Loans and copies Mr Maponya.

This letter which I shall call a Cession Letter authorised as SA Home Loans or the borrower to cede the fee of R 45 million payable to PIC in terms of Clause 16.7 to MMI.

Also, the letter requires the borrower to repay this amount to PIC.

However, prior to the issue of the Cession Letter, MMI demanded payment of R45 billion from SA Home Loans.

10 SA Home Loans pointed out that there was no legal basis on which to pay the fee to MMI, as there was no specific clause which specified that payment must be made to MMI.

Mr Kevin Penwarden, the CEO of SA Home Loans proposed that in the absence of an addendum to the Master Loan Facility Agreement, the only way to payment to MMI could be done was through PIC issuing a cession in terms of the said agreement.

This message was communicated to PIC's Legal Division after which a cession letter was issued.

20 At a SA Home Loans Board meeting held on the 9th May 2016, the matter relating to the fees was a source of heated discussions.

I proposed that the matter relating to the fees be a matter discussed between the PIC and MMI and decided that we will withdraw the Cession Letter.

The board agreed with this but the Standard Bank Nominated Director on the SA Home Loans Board, Mr Larry McCarthy requested

that if PIC agreed to pay MMI a fee, then such must be disclosed in writing to the SA Home Loans Board.

An agreement related thereto would be referred to the shareholders for ratification.

The following day, that is the 10th May 2016, a letter of even date was sent to SA Home Loans and MMI would stated that to the extent that there is no funding arrangement mandate, whether expressed, tacit or otherwise between the servicer or the borrowers and MMI and or external arranger, PIC rescinds the cession per the Cession
10 Letter.

It has been established that there is no funding arrangement mandate concluded between SA Home Loans and MMI.

Mr Maponya contested this and after obtaining legal opinions, it was agreed that the cession cannot in law be unilateral rescinded but requires MMI written consent.

Again, this matter became a source of heated debate and at another meeting of the Board of SA Home Loans I applaud Mr Maponya to agree to PIC's rescindment of the cession which he eventually acceded to in the meeting.

20 MMI subsequently issued a letter dated 4th November 2016, agreeing to the rescindment, as well as withdrew its demand of the fees.

On 11th April 2019, MMI ...[intervenes]"

MS JILL MARCUS: Sorry. Just for clarity around dates. So that took about from April to November for that to be rescinded.

MR ROYITH RAJDHAR: Yes.

MS JILL MARCUS: And then the matter and withdrew and you have that in writing as per Annex L that he has withdrawn and withdrew the demand for the fees as well.

MR ROYITH RAJDHAR: Yes.

MS JILL MARCUS: And it is now in court three years later. 2017, 2018, 2019. Well, two and a bit years.

MR ROYITH RAJDHAR: Yes, it is in court.

MS JILL MARCUS: Was there anything that occurred in that
10 intervening period between November 2016 and April 2019? Were there any interactions between you? Were there any further correspondence? Where did the matter lay in that intervening period?

MR ROYITH RAJDHAR: Yes, in the intervening period, the matter rarely ever came up and even when Mr Maponya did raise the matter it was not with such vigour or conviction as he had before.

So we could said by enlarge since that – when agreeing to that rescindment it had been fairly quiet between the parties. Nor, if I recall correctly, I do not think it ever even came up at a board meeting of SA Home Loans. Not to my recollection.

20 But my understanding is that the reason why it has come is because and I am not a legal person but I understand after three years the debt prescribes and I think this is meant to keep it alive.

“On 29th April 2019, I attended an Audit and Risk Committee meeting of SA Home Loans.

At the meeting Mr Kevin Penwarden presented a report to the

meeting.

In this report he indicated that two directors of SA Home Loans had engaged had engaged with one of the members of his senior management on the matter relating to the fees.

The report states that the two directors that they indicated that a further R 10 billion facility could be procured for SA Home Loans, provided a fee of 0.95% of this facility could be procured.

This fee ...[intervenes]

MS JILL MARCUS: Sorry. Just before you proceed. He engaged with
10 one the members of his senior management. This is the SA Home
Loans management on the matter relating to the fees. These are other
fees? Nothing to do with the MMI fee dispute?

MR ROYITH RAJDHAR: Okay. So, if I finish this one sentence, then I
will address that, Commissioner.

“This fee would incorporate the R 45 million that has not been
paid...”

So, if you unpack the 0.95% it would be at 0.5% of R 10 billion
and if you take R 45 million as a percentage of R 10 billion, that is
0.45%. So it comes to 0.95%.

20 So this is what the CEO of SA Home Loans is saying, this is
disguising the way in which to bring back the R 45 million.

MS JILL MARCUS: And who would the loan be from?

MR ROYITH RAJDHAR: The loan would be directly from GEPF. So
our understanding is that they would procure the loan. A further facility
of R 10 billion from GEPF.

MR EMANNUEL LEDIGA: And it is a new facility?

MR ROYITH RAJDHAR: A new facility.

MR EMANNUEL LEDIGA: Thank you.

MS JILL MARCUS: Sorry. Just in relation to that. Did you discuss with the GEPF as to whether there was in fact the possibility of a loan and that this was in fact a way of paying a fee that was improper?

MR ROYITH RAJDHAR: Through you, Commissioner. Just to state first is that, the matter with regards to GEPF and funding of SA Home Loans. We had discussions with GEPF but probably about six months
10 ago, where GEPF indicated that the R 10 billion – that the initial funding was a once off and there was never any intention to continuously fund GEPF.

MS JILL MARCUS: Initial funding that which you gave to SA Home Loans at the initial investment?

MR ROYITH RAJDHAR: Yes, that it was a once off. That there was not an intention that, that would have been a commitment or a first of many commitments. So we were quite clear on that.

However with regards to this particular fee, we have not discussed that with GEPF yet. This is a matter that is going to be
20 subject to further discussion tomorrow's board meeting of SA Home Loans because the two directors have denied the version of events from the CEO of SA Home Loans.

“So subsequently Mr Penwarden shared his report with the board and the shareholders.

Mr Penwarden also reported the matter to the auditors and that is the

SA Home Loans auditors, who have submitted a report to the Independent Regulatory Board of Auditors in terms of Section 45 of the Auditors Professions Act of 2005.

The auditors have provided the directors of SA Home Loans until the 30th May 2019 to respond to this reportable irregularity as is defined in Section 45 of the foresaid act.

Both directors have denied Mr Penwarden's allegations and have requested a meeting of the board to present their case.

This meeting is scheduled for the 22nd May 2019..."

10 **MS JILL MARCUS:** And I am assuming that the two directors that are referred to, neither of them are the PIC's representatives, including yourself?

MR ROYITH RAJDHAR: One is the PIC representative. One is ...[intervenes]

MS JILL MARCUS: The other PIC representative were you?

MR ROYITH RAJDHAR: No, it is the other PIC representative. And ...[intervenes]

MS JILL MARCUS: Just remind us who that is?

MR ROYITH RAJDHAR: Mr Wellington Masekesa. And then it is – the
20 one representing the *Beat* Consortium.

MS JILL MARCUS: So it is basically Mr Maponya and the PIC?

MR ROYITH RAJDHAR: Yes.

MR EMANUEL LEDIGA: Can you please explain paragraph 27 again? Why this reporting to IRBA?

MR ROYITH RAJDHAR: Okay, if I... It is long since I have engaged

with this particular section of the act, but what basically happens is the auditors in the conduct of their duties, if they come across any potential irregularity defined in this Section 45 as a reportable irregularity.

What they have to do is within three days of becoming aware of that irregularity, they have a duty to report this to the Independent Regulatory Board of Auditors.

And then the Independent Regulatory Board of Auditors will give you a certain amount of time within which to come back and state
10 whether, is there definitely – because at that point when it is reported, it is not reported on the basis that it is proven beyond reasonable doubt that irregularities is taken. It is a judgment call.

But they give you a certain amount of time to come back and confirm whether there is an irregularity or not or there was an irregularity and it has been resolved or there is an irregularity and it is continuing.

So that is the – what you have to come back and report to them on. Now they have given us to come back to them by the 30th May.

20 So a meeting tomorrow at the Board of SA Home Loans is first to deal with that matter, so that the board also issue a response to the auditors who then will report to the IRBA.

MR EMANUEL LEDIGA: ...would this point 0.95% fee. Is that the whole issue there?

MR ROYITH RAJDHAR: The issue is that – it comes back to the

R 45 million. That the R 45 million, we say is not payable but it is... We are saying... If you say that you are going agree on a fee of 0.95% of the new facility, what it is saying is that when you unpack that 0.95% you are just finding a back door for the R 45 million.

MR EMANNUEL LEDIGA: It is fine. Thank you.

MR ROYITH RAJDHAR: Thank you, Commissioner.

MR EMANNUEL LEDIGA: Ja, just explain to us in terms of fees and how the PIC sort of looks at fees. When you do a DD, I mean, do you charge fees? Do they go to the PIC or do they go the GEPF?

10 Because one normally thinks that the sponsor would pay transaction fees because they do their memo valuations and the other things, you know.

 Just explain to me what typically happens, especially when the PIC/GEPF must get the fees.

MR ROYITH RAJDHAR: Okay, what would happen is that when we go to PMC1 and we request permission to proceed to do due diligence. Once that is granted we would enter into an Engagement Letter with the client.

20 What we would do in most cases, is that the default position is, they will always charge you 1% fee to the client, but that fee is there to recoup our costs. It is not intended to be part of the return. It is there...

 Because in most instances we would take the risk on the investment. We would commission the legal due diligence, the financial due diligence, the commercial, the technical and the legal and

regulatory due diligence.

We would commission that. So hence we would charge that fee and that fee... There are case where we had capitalised is to the loan. So it means it has got to be repaid to us. That is how we do it.

MR EMANUEL LEDIGA: So meaning that you could have the 2% fee that you charge as the PIC in the loan and the client must have an advisor too. So they would have fees which are either paid or they are charge within the loan too. Is that correct?

MR ROYITH RAJDHAR: Yes, the client has to appoint its own advisor,
10 normally. I mean that is the expectation. Is that they will have to have their own advisor.

But there are cases where for example in the renewable energy space. You would have everybody agreeing the – for example the banks would normally on the debt side. The PIC would be on the equity side.

So we will all jointly agree on the would service providers to procure and the fee arrangement would be one where agreed by everybody. So it varies from case to case but enlarge as I described earlier that is the most common way of doing it.

20 **MR EMANUEL LEDIGA:** So meaning typically you might have the PIC fee, the 1% within the debt and you could have another fee from the sponsor within the debt also?

MR ROYITH RAJDHAR: Yes, the sponsor could also be incurring fees.

MR EMANUEL LEDIGA: Does the sponsor have to get the permission from the PIC to include the fee within the debt structure?

MR ROYITH RAJDHAR: Yes.

MR EMANNUEL LEDIGA: Yes?

MR ROYITH RAJDHAR: Yes. Typically what we are doing in the Engagement Letter, we would give them the option of it being capitalised.

MS JILL MARCUS: Can I just ask one question which may or may not...? You may not... Are municipalities allowed to borrow? Can you lend to municipalities?

MR ROYITH RAJDHAR: Commissioner, as far as I am aware,
10 municipalities may borrow but they have got to follow the Municipal Finance Management Act. The provisions in that act which I am not too familiar with it.

MS JILL MARCUS: Okay.

CHAIRPERSON: Ms Khooe, any further questions?

ADV NKAISENG KHOOE: I have no further questions, Mr Commissioner and I think it would be an appropriate time to take a tea break.

CHAIRPERSON: Should we not excuse Mr Rajdhar first?

ADV NKAISENG KHOOE: We can do that, Commissioner.

20 **CHAIRPERSON:** Yes, thank you Mr Rajdhar. Thanks again. I mean the same comments apply that I have, you know, given you on the last occasion. We might see your face back here again. We are not sure of that but thank you so much so far, alright.

MR ROYITH RAJDHAR: Thank you, Commissioner.

CHAIRPERSON: And you are excused for the day. We will adjourn

until twenty to twelve.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV JANNIE LUBBE SC: Okay, you can stand. Mr Commissioner, members, we are ready to proceed. Our next witness is Mr Sello Adson Motau. He is ready to take the oath. Just press the red button there.

CHAIRPERSON: Good day Mr Motau.

MR SELLO ADSON MOTAU: Good day Commissioner.

CHAIRPERSON: Are your name Sello Adson Motau?

10 **MR SELLO ADSON MOTAU:** That's correct Commissioner.

CHAIRPERSON: Do you have any objections with taking the prescribed oath?

MR SELLO ADSON MOTAU: Not at all.

CHAIRPERSON: Do you swear that the evidence you're about to give will be the truth, the whole truth, nothing but the truth. Raise your right hand and say, so help me God.

MR SELLO ADSON MOTAU: So help me God.

CHAIRPERSON: Thank you very much. You may be seated.

MR SELLO ADSON MOTAU: Thank you.

20 **ADV JANNIE LUBBE SC:** Thank you Mr Motau, if you will just speak into the microphone and please speak up. You have prepared a written statement for the benefit of the Commission. Is that correct?

MR SELLO ADSON MOTAU: That's correct.

ADV JANNIE LUBBE SC: And you have offered to come here voluntary, it was not necessary to subpoena you?

MR SELLO ADSON MOTAU: That's correct.

ADV JANNIE LUBBE SC: Can you please then- and the last matter, the statement was prepared by yourself?

MR SELLO ADSON MOTAU: That's correct evidently.

ADV JANNIE LUBBE SC: And you confirm the content has the truth and correct.

MR SELLO ADSON MOTAU: That is correct.

ADV JANNIE LUBBE SC: Please proceed.

MR SELLO ADSON MOTAU: Thank you. My background, I'm a 46-
10 year-old male, chartered accountant by profession. Having qualified as such on 31 December 1999 after completing articles of clerkship with KPMG in Johannesburg office.

CHAIRPERSON: Did you say 1989 or 1999?

MR SELLO ADSON MOTAU: 99.

CHAIRPERSON: 99.

MR SELLO ADSON MOTAU: 1999 Commissioner. I hold a Bachelor of
Commerce Degree in accounting from the University Witwatersrand and a higher diploma in accounting from the University of Natal. I was employed by Eskom Holdings SOC Limited as Head of Compliance in its
20 Treasury Division for a period of two years. And at Iscor Limited as Assistant Treasurer for about 16 months. Left Iscor after it was taken over by LNM Holdings later Arcelor Mittal at the end of August 2003. 1 September 2003, I joined KPMG as Audit Partner in the Financial Services Division Johannesburg office. I was also appointed as Director of both the audit practice as well as the advisory division. On

30 June 2008, I resigned from KPMG to pursue my entrepreneurial aspirations. Currently I'm a non Executive Director of Lanseria International Airport and its subsidiaries. I was appointed as transaction advisor on that matter by the [inaudible]. And due to my in depth knowledge of the entity was subsequently recommended for appointment to the board of Lanseria in October 2013 by the Public Investment Corporation and was also appointed- sorry, and was appointed by the shareholders in October 2013 as one of the two independent representatives on that board.

- 10 **MS GILL MARCUS:** Sorry Mr Motau, could you just elaborate a little bit when you say you were the transaction advisor on that matter? Can you just tell us what that matter was?

MR SELLO ADSON MOTAU: So on the Lanseria Airport transaction. So in 2011 Commissioner a Consortium led by Nozala made an offer to buy Lanseria International Airport. And they approached PIC for funding and that transaction was concluded in 2013 on the 30th of June with PIC as a shareholder, Harith Fund Managers and their BEE Consortium led by Nozala Investment Holdings. I'm an Executive Director at Theko Capital which I've founded and have been a Director since its incorporation in 2009. Theko provides corporate and project finance advisory services in various sectors of the economy. It also makes principal investment in certain instances. Our main focus is to provide advisory services on projects that have a high impact in achieving a positive social change. We've done good work in this area over the past ten years as an emerging advisory firms. In particular

some of that advisory mandates we've successfully concluded and delivered on. Since our establishment include Kalagadi Manganese, Lanseria International Airport, Clinic Selfcare etcetera. As the founder and Executive Director of Theko I'm authorised to depose to this submission and appear before this Commission to provide additional information and clarity on the subject matter not adequately covered by the statement if the Chairperson deems it fit. Facts contained unless otherwise stated or indicated are within my own personal knowledge. Information that has been highlighted in grey is confidential because

10 the Karan Beef transaction remains ongoing. However I understand that there were developments yesterday where some of the information financial and otherwise of Karan Beef was spoken about yesterday in public. So I think when we get there I'll be guided by the Commission as how we approach that section of their submission. The purpose of this submission, I'm involved in both the Karan Beef transaction and Export Trading Group transaction. Karan Beef transaction Theko is a transaction advisor represented by me. In the Export Group transaction Theko is the originator of the transaction represented by me and approached the PIC to apply for funding. Because of my involvement in

20 both transactions I've been asked by the evidence leader Adv Lubbe to testify at this Commission on the following issues.

MR EMMANUEL LEDIGA: So Mr Motau, are you an advisor to the BEE Consortium?

MR SELLO ADSON MOTAU: That's correct sir. The allegations made against me personally in the James Noko email on 30 January 2019.

An email was written by new whistleblower James Noko was circulated on social media which made references to a number of allegations against me in relation to the Karan Beef transaction and its promoters. Certain improprieties link to the former CEO of the PIC Dr Dan Matjila, Non Executive Director of the PIC Ms Dudu Hlatshwayo and certain senior politicians Mr Mashatile and Gungubele.

CHAIRPERSON: Can you please do me a favour and pull the mic a little closer to you?

MR SELLO ADSON MOTAU: Okay thank you. [inaudible] Mr
10 Commissioner. In the Karan Beef transaction on the valuation delegations made regarding the transaction in the James Noko email and the Governance process followed by the PIC in that transaction. So the evidence leader requested that we speak about the processes followed from the beginning to the appointment of that particular transaction.

MR EMMANUEL LEDIGA: Just briefly can you just tell us what James Noko is saying about you in particular in summary? Is it covered somewhere or?

MR SELLO ADSON MOTAU: It's covered elsewhere on page six. If I
20 can deal with it when we get to page six, Commissioner?

MR EMMANUEL LEDIGA: Yes, that's fine.

MR SELLO ADSON MOTAU: Thank you. In the - sorry I spoke about the Export Trading Group transaction as originator. So evidence leader wanted to understand the processes followed beginning to end in terms of those two transactions. In addition to the James Noko email dated

30 January 2019, there was also an email from James Noko which was sent- it was the end of August 2018. The August 2018 email makes the same allegations as the 30 January 2019 email but implicates additional people. The August email is attached here to annexure KB1, I don't have the initial with me but it is somewhere. And this email was sent as soon as the investment committee of the PIC gave final approval on the Karan Beef transaction.

At the outset I wish to put it on record that I categorically deny all allegations level against me by James Noko. As being without
10 foundation and without substance and simply intended to be defame and tarnish my good name and that of Theko. Furthermore I wish to state that my involvement with the PIC in so far as it's relates to the Karan Beef transaction is in advisory capacity rather than on an equity participation as alleged in the said James Noko email.

The remainder of the allegations contain therein a fabrication and not based on any truth or evidence. I'm not aware of any credible evidence that support the allegations made in the James Noko email. Despite this Commission providing ample opportunity for him or anyone with credible information to come forward. Nevertheless I want to
20 respond to the allegation levelled against me and assist the Commission in its investigation. I therefore want to state the following; I'm not involved in a romantic relationship with Ms Dudu Hlatshwayo and I've never had such relationship in the past. I met Ms Hlatshwayo when she was appointed to the board of Lanseria International Airport on 25 September 2014. Have cordial business relationship with Ms

Hlatshwayo and have socialised with her in a business context. For example, I do play occasionally golf with a number of fellow golfers and I've on a few occasions played golf with Ms Hlatshwayo.

I'm not a shareholder in any ownership structure in the proposed Karan Beef transaction. Theko in particular and in particular my role is that of transaction advisor. To the best of my knowledge the Karan Beef price was not inflated an independent valuation which I have was done by one of the leading investment banks in the country being Rand Merchant Bank. And they've provided a valuation branch to
10 the Consortium. I understand that the PIC also perform their own valuation internally however I've never seen that valuation. The final price was agreed with a seller after extensive negotiations.

MR EMMANUEL LEDIGA: Just to check in terms of the RMB valuation, who was it done for and who paid for it?

MR SELLO ADSON MOTAU: The RMB valuation was done for the PIC and the Consortium because those are the two parties that have joined forces to buy Karan Beef with PIC owning 70% in the SPV and the BEE Consortium owning 30% in the SPV. RMB basically agreed to do the task on risk, yes. Further I was not appointed to Lanseria International
20 board to help Ms Dudu Hlatshwayo. I've been on the board of Lanseria since 31 October 2013 as a permanent member. And Ms Dudu Hlatshwayo was appointed on 25 September 2014 on a two year rotation basis. I was never appointed to the KZN Growth Fund by the PIC but rather I was appointed to the KZN Growth Fund by the MEC of Economic Development in Kwazulu-Natal Mr Mike Mabuyakhulu. And I

served for 12 months as Chairman of Audit and Risk Committee. The rest of the submission deals with my involvement as transaction advisor on Karan Beef and Theko's involvement as originator in the Export Trading transaction.

MR EMMANUEL LEDIGA: Can I just ask you and if you are going to cover it, let's cover it somewhere else about the valuation.

MR SELLO ADSON MOTAU: It's covered somewhere else.

MR EMMANUEL LEDIGA: It's covered somewhere else.

MR SELLO ADSON MOTAU: Yes. Karan Beef operates the largest
10 cattle feedlot and abattoir on the Continent and is the largest single
phase feedlot and abattoir in the world. The company was founded in
1974 by the Karan family and is based in Heidelberg for the feedlot,
Balfour for the abattoir and City Deep for the distribution centre. The
feedlot accommodates 150 000 head of cattle at any given time. The
Balfour based abattoir is licensed to process 2200 head of cattle daily.
South Africa is Karan Beef's single largest market but it also has a
substantial export market with China, United Arab Emirates as well as
North Africa. Karan Beef is controlled by Mr and Mrs Karan and owned
entirely by the Karan family.

20 The business of Karan Beef comprises Karan Beef being the
sales marketing and abattoir business owned by the family trust as well
as the feedlot which is the farming operations owned by Mr Ivor Karan
as a sole trader. We call them collectively the sellers herein on. My
involvement in the proposal acquisition of Karan started during
September 2017. One of the transaction promoters Mr Reggie Kukama

approached me as a director of Theko to be transaction advisor in the proposed acquisition of Karan Beef by Black Economic Empowerment Consortium he was leading. Prior to Theko's involvement a funding application for the transaction had already been submitted to the PIC. They needed a transaction advisor to help with the structuring and coordination of the entire deal process.

As part of client acceptance procedures I enquired how the transaction had originated and how the various role players were involved in the deal. Based on my discussions with the promoters and
10 review of available correspondence the transaction came about as follows. Shareholders of Karan Beef were in the process of, were in discussions about a potential transaction with a foreign company. Mazi Capital came to know about the potential transaction through Johann Pretorius who is related to the CEO of Karan Beef. Johann is a former colleague and a friend of one of the directors of Mazi, Kgapu Mphahlele.

I understand that Johann mentioned a potential foreign transaction to Kgapu Mphahlele who requested Johann to facilitate a meeting with Karan Beef to talk about a possibility of Karan Beef being
20 sold to a local consortium of investors so that the ownership is retained in South African hands. I understand that Kgapu then approached the PIC about Karan Beef as a potential investment by the PIC and a Black Economic Empowerment Consortium represented by the promoters- there's a typo there, Reggie Kukama and Malungelo Zilimbola. This is due to the strategic role that Karan Beef plays in the economy.

As a leading supplier of beef in the South African market and how- if it's not acquired by a South African company it could create a crisis in the local market from a food security perspective in the long term. I understand that Kgapu Mphahlele gave the PIC contact details of Karan Beef to request meeting and discuss possible investment by the PIC and a Black Economic Empowerment Consortium. A number of discussions between Karan Beef, the PIC and the Consortium took place at the Karan Beef feedlot in Heidelberg between July and September 2017. I understand that they reached an in principle
10 agreement that the PIC and the Consortium would be given a chance to do a comprehensive due diligence review and valuation of Karan Beef.

ADV JANNIE LUBBE SC: Do I understand correctly Mr Motau that at this stage you were not on the scene?

MR SELLO ADSON MOTAU: I was not on the scene Commissioner.

CHAIRPERSON: When you say I understand I suppose you're talking about information that you got or do you know these as facts?

MR SELLO ADSON MOTAU: I was told about that information and I've reviewed some correspondence basically between PIC and the Consortium dated October 2017 talking about a transaction.

20 **MR EMMANUEL LEDIGA:** Was the PIC part of the meeting on paragraph 18.4?

MR SELLO ADSON MOTAU: That's correct. There were a number of meetings as I understand. One between the PIC CEO, the then CEO and the family on the farm where he brought the deal team from private equity and development investments. There was a meeting between

the PIC and the promoters on the farm. I think, I speak under correction, there must have been also another meeting with the deal team only without the senior people in the transaction.

MR EMMANUEL LEDIGA: Just to check quickly, so the first meeting between the PIC and the Consortium sort of who was there? Who were there?

MR SELLO ADSON MOTAU: I am not sure. The Consortium may be able to provide further clarity on that.

MR EMMANUEL LEDIGA: Okay, thank you.

10 **MR SELLO ADSON MOTAU:** I understand that the potential transaction with the foreign company was not pursued when it became apparent that the foreign company planned to export the majority of the produce. And the sellers considered this to be a food security threat to South Africa. So they disengaged the foreign company. When Theko Capital started as advisors on the transaction, we requested audited financial statements of Karan Beef for the previous three financial years. Recent management accounts in order to satisfy ourselves that Karan Beef's historical performance can support the seller's valuation of 6 billion rand. Also may I just pause there Commissioner to say that that
20 valuation of 6 billion rand was based on the offer apparently that they had received from the foreign company. I've not seen it but that what we've been told.

MR EMMANUEL LEDIGA: Sorry, just to follow up, is that one understands that the seller actually has been very adamant that he wants the 6 billion rand no matter what. Is that correct?

MR SELLO ADSON MOTAU: That's correct.

MR EMMANUEL LEDIGA: That you know he won't sell below that.

MR SELLO ADSON MOTAU: If you look at the valuation further on we've basically come up with a solution where we can essentially pay a reasonable price. But somewhere when I talk about an indicative expression of interest that was submitted to the seller. Originally it was 6 billion rand, he said this is my price, this is what I've been offered and I'm not budging. The engagement between the Consortium and Karan was formalised by submitting an indicative offer which
10 remains subject to an independent valuation.

Comprehensive financial legal and commercial due diligence review and approval from the following committees of the PIC; Portfolio Management committee one PMC 1, Portfolio Management Committee two and the Investment Committee of the PIC. This indicative offer was accepted by Karan Beef subject to very tight deadlines to finalise the transaction within less than six months of accepting the indicative offer. I think if I recall well, this indicative offer was concluded in early December 2017. With this information the seller requested a letter of support from the PIC.

20 When I say this letter, I think this was the original letter that have been received on 5 December 2017 expressing PIC support of the transaction. I think there was another letter dated middle of December that PIC wrote in support of the transaction which obviously made it very clear that PIC will only participate once there's approval by relevant committees and due diligence as well as valuation. The

Consortium then went ahead to appoint Cliffe Dekker Hofmeyr on 5 February 2018 to perform legal and environmental due diligence. Deloitte on 28 February 2018 to perform financial and tax due diligence review as well as genesis analytics on 11 May 2018 to perform what we call a commercial due diligence.

Essentially looking at the market performance agricultural sector underlining assumptions and basically validating them to proof that once they go into the model those assumptions make sense. It was agreed between the PIC deal team and the Consortium that the Consortium will appoint and pay the service providers and that the PIC will rely on the work of such service providers for as long as they meet certain standards in terms of experience, capability, etcetera. The Consortium appointed RMB on 22 March 2018 to perform an independent valuation of Karan Beef and work alongside Theko in the final transaction structure and compile a detailed investment memorandum. RMB agreed to work on a success basis given that the Consortium was not in a position to fund cost associated with this stream of work. The final due diligence report from Deloitte was received on 6 June 2018. Legal and environmental due diligence reports was received from Cliffe Dekker Hofmeyr on 25 May 2018. After four months of extensive work and discussions with the Karan Beef teams. The independent RMB valuation was received on 5 June 2018.

All three reports were provided to both the Consortium and the PIC.

MR EMMANUEL LEDIGE: Just a question, in terms of Theko, were you guys being paid or working on risk?

MR SELLO ADSON MOTAU: On risk.

MR EMMANUEL LEDIGA: On risk.

MR SELLO ADSON MOTAU: Yes. So the valuation of Karan Beef was 5.2 billion rand calculated as follows. So RMB used a discounted cash flow method based on three scenarios. One, they conservative scenario which basically was saying that lets tone down on the assumptions in terms of economy growth, demand, number of cattle
10 sold and a whole range of assumptions. The management case is which was presented by the management team as forecast for the next three years as well as the investor case which is what the BEE Consortium searched down and basically considered that look this is essentially what this business could do. The...(intervention)

MS GILL MARCUS: Sorry, before you continue, is it possible just give us an idea of who comprised the Consor [inaudible - did not finish word]?

MR SELLO ADSON MOTAU: Commissioner the Consortium comprised of two entities. One was Nguni Holdings which was wholly owned by
20 Mazi Capital. Mazi is in the financial service industry so in that structure you've got the promoters- sorry the CEO, CIO and the whole team basically that works at Mazi and is allocated shares. Basically they are part of the Consortium and then two, there's Reggie Kukama who's leading the Consortium. Mazi owns 50% and the other 50% is owned by Reggie Kukama with an understanding that about 17% will

allocated to women I think 12 months within the financial closure of the transaction.

MS GILL MARCUS: 17% percent of his share or of the whole?

MR SELLO ADSON MOTAU: Of the total.

MR EMMANUEL LEDIGA: But then one assumes that Kgapu Mphahlele, the guy who started all this is within the Mazi Capital shareholding.

MR SELLO ADSON MOTAU: Yes, within the Mazi structure.

MR EMMANUEL LEDIGA: Is that correct? Okay.

- 10 **MR SELLO ADSON MOTAU**: That's correct. So the [inaudible] valuation range came in between 3.9 and 5.4 billion, 3.9 on the low range being the conservative case as well as 4.6- sorry 5.4 on the management case and then the Consortium case came up to about 4.6 billion for 100% of the company. Some of the key valuations considerations took into account that Karan Beef is an established business with 45 years trading history and a very strong client base, very strong brand, leading supplier of beef in the market, strong financial performance and profit history.

- 20 Over the past five financial years that is being 31 July 2014 to 31 July 2018, the company processed on average 400 000 head of cattle per annum and EBIT which is earnings before interest, tax, dividends and depreciation and amortization in excess of 500 million rand per annum. So that is essentially during that period. So this is not a new company, it's got a track record. And essentially in doing valuation you don't look and say that, what is management presenting

to you? You basically look at the historical performance. And based on this we are satisfied that look we could essentially come to an agreement on a reasonable transaction for both parties.

MR EMMANUEL LEDIGA: Clarify this for me sort of please. The head of cattle which they have, you said is 150 I think.

MR SELLO ADSON MOTAU: That's right.

MR EMMANUEL LEDIGA: 150 000.

MR SELLO ADSON MOTAU: Yes.

MR EMMANUEL LEDIGA: And how does it happen that they can then
10 kill 400 000 per annum?

MR SELLO ADSON MOTAU: Commission, so what they do in the cattle feeding industry, you take the cattle in 150 000 at any given time. You feed them for four months and after four months, you basically take them to the abattoir and then you slaughter. And then you bring new cattle in on a monthly basis. So essentially you take the 150 000 cattle that is a capacity of the feedlot multiply by three. That's essentially the capacity of the farm. So you rotate your stock three times a year.

MR EMMANUEL LEDIGA: Yeah. Three times per annum?

MR SELLO ADSON MOTAU: That's correct.

20 **MR EMMANUEL LEDIGA:** Oh, I see so it means it's what 450 000.

MR SELLO ADSON MOTAU: 450 is the capacity. That's their holding capacity of per farm or per annum. But if you look at 2014, they would have slaughtered maybe 389 000. In 2016 because it is a good time in the market would have slaughtered about 420 000. So when you average over the five years, they would have processed or slaughtered

400 000 head of cattle on average per month.

MR EMMANUEL LEDIGA: So it takes about four months to go from birth to abattoir?

MR SELLO ADSON MOTAU: No. Commissioner threw you. What happens is that so you've got the whole value chain. The breeders of cattle, essentially they'll breed and then the cattle will be on milk for about six to eight months. And then after that period they wean them off milk and they put them on the veld to basically feed on pastures, so those are called weaner calves. So Karan Beef essentially is one of
10 the largest buyers of weaner calves in the market.

So once cattle has been weaned, they basically get sold by mostly the breeders and farmers to feedlots for them to then go under on that three four months intensive feeding program. They get fed from eight months to about 12 months and then once they are 12 to 14 months old, depending on their growth projection they get sent to the feedlot for slaughtering. Karan Beef buys on average 33 000 weaner calves per month. 21 000 of those on average come from farmers in South Africa from as far as the Eastern Cape, KZN, Mpumalanga and the balance of about 10 to 12 000 weaners come from Namibia.

20 **MR EMMANUEL LEDIGA:** Quite interesting.

MR SELLO MOTAU: Yes.

MR EMMANUEL LEDIGA: So their lifespan is about 14 months?

MR SELLO MOTAU: That's correct.

MR EMMANUEL LEDIGA: Okay.

MR SELLO MOTAU: Ja and that's for the A-grade beef Commissioner

because you know it depends on how you, essentially how long you keep your cattle. So for a weaner about 8 months during their highest prices of weaner calves which have been after the drought people would fetch about R8 000,00 for that calf, 220 kilogram calf, that was the going market price. Some people prefer to keep cattle, people say they give them names and they keep them long and then the value of the cattle doesn't increase the longer you keep it. After 20 months, 30 months this is where certain markets prefer the beef, they call it C-grade beef which is essentially harder but with certain different
10 flavours. That beef is preferred mostly in the Eastern Cape rural areas, KZN and most of the rural areas here. But what you eat at Trump Steakhouse is A-grade beef mostly from producers such as Karan and others in the market.

CHAIRPERSON: I'm just wondering who makes the money?

MR SELLO MOTAU: Sorry?

CHAIRPERSON: I'm just wondering who makes the money in this business?

MR SELLO MOTAU: It is the farmer and the breeder because if you look Commissioner at the last few months ... (intervention)

20 **MR EMMANUEL LEDIGA:** Judge is a farmer so he does cattle also so but I don't know whether it's C-grade or A-grade.

MR SELLO MOTAU: No, no, so that is, if you sell your weaners in about six to eight months that's where they are most profitable, the longer you keep them the more money you lose Commissioner.

CHAIRPERSON: I've got a little bit of experience in that, I was at a

stock fair four weeks ago so okay.

MR SELLO MOTAU: Thank you. The key risks associated with the company, that the company manages actively are beef selling price which is essentially a market issue, supply demand, weaner prices which is essentially market issue, feed prices driven by the maize price. Agriculture is a very cyclical business and very volatile so during times of drought you see input costs of agriculture going up. I read the newspapers Business Day today, see some of the two leading agricultural companies, I think it's Pioneer Foods and the others
10 plummeting because of you know the uncontrollable input price. So this is a very risky market, it's very cyclical and volatile.

What differentiates Karan is a tangible nett asset value underpinning its valuation. The calculated tangible nett asset value during the due diligence review process was estimated at about R4.9 billion and more than half of the nett asset value was made up of short term assets being cattle. So if you take 150 000 cattle with an average selling price say of R10 000,00 you've got R1.5 billion already in cattle, feed, medicine *etcetera*. There's also significant long term assets being trucks, state-of-the-art feedmills, abattoir, the farms and everything, all
20 the developments on that particular property.

In the final analysis RMB recommended an indicative valuation range of R4 to R4.5 billion for 100% non-controlling stake in Karan Beef as opposed to the sellers valuation for R6 billion for 100% of Karan Beef. We therefore needed to breach this valuation gap of R1.5 billion on the upper range by entering into robust price negotiations with the seller.

He eventually agreed to a selling price of R5 billion for 90% of the business payable in two tranches R4.5 upfront and then a guaranteed deferred payment of 500 within 12 months of financial closure on condition the seller implemented certain operational plans as well as achieve a minimum of about 400 during the said 12 months but the price adjustment was kept at R200 million.

The 500 was guaranteed payment to the seller and they wanted this money to placed in an escrow account for the benefit. The seller agreed secondly to retain 10% for the business for a period of three
10 years during which he will work with the new shareholders to transfer skills and expertise. The seller granted the consortium a European-style call option to acquire the 10% from the Ivor Karan Family Trust at a strike price of R200 million. The sellers agreed to grant this option to the consortium to ensure that it can also create some value over the duration of the transaction. This was with the understanding that a debt laden structure may lead to a complete collapse in the structure with the consortium walking away empty-handed after seven years.

When I talk about a debt laden structure there has been a lot of experiences where BEE companies are in deals for seven years and
20 after that if the company is not performing they walk away empty-handed. You'd have seen the papers last week ... (indistinct) 06.45BEE structure was un-warned it went to the banks. Just listening to the Commission last week when Mr Rajdhar spoke about a transaction where the PIC will take back the shares because their structure has not performed and BEE parties are out. So this was also meant to at least

safeguard certain upside for the participation of the BEE parties.

ADV JANNIE LUBBE SC: Can you please elaborate a bit more and explain what is meant by an European-style call option?

MR SELLO MOTAU: Basically Commissioner you can exercise this only after the expiry of the three years that is the only time you can exercise the call option. You can basically go to the seller and say that I want to buy your shares for R200 million.

Okay at the time the business case for investing in Karan Beef was developed by the consortium alongside the sellers and was premised on
10 the following key medium to long term initiatives: One, as a BEE company I think there's opportunities to sell more to the public sector. The targets will be the Department of Defence, Correctional Services, Department of Health *etcetera*, by diversifying produce across product lines. Most of these departments consume C-grade beef and with the pending acquisition of Manjoh Ranch which has now been concluded the new owners will be in a position to supply different grades of beef as per the demand in the market particularly in the Eastern Cape and KZN where C-grade beef is in high demand.

Increased sales in the private sector client, as an empowered company
20 it creates new opportunities in supplying to their private sector clients mostly in the retail sector, terms and conditions are better there. Development of black agricultural skills based ... (intervention)

MR EMMANUEL LEDIGA: Yesterday we heard that the Department of Corrections do have their own beef you know or own cows so is there some market there?

MR SELLO MOTAU: Commissioners so we're not only focussing on the Department of Correctional Services, they do self provision but some of the feeding contracts the beef is procured from Makro, we know about that, so essentially there's an opportunity to basically look and see whether it's the Department of Health, not Agriculture sorry, Correctional Services, Defence where there are opportunities to procure from a black company. One thing that is important to note is also that the premium between C-grade beef and A-grade beef has been narrowing so it's not like the price difference between C-grade
10 and A-grade is no longer as high as it used to be, so the margins are thinner.

MR EMMANUEL LEDIGA: Just a quick one, you know can you explain what is the difference between A-grade, B-grade, and C-grade, what will I taste, I mean what will it mean, you know is that from Woolies you know the A-grade is from Woolies?

MR SELLO MOTAU: Commissioner the A-grade is basically under, in most cases 14 months of age, between 12 and 14 months, the meat is soft, they're juicy and basically when you buy A-grade you go to Woolies and you pay a bit of a premium. Most of the expert market that
20 Karan services and most of the beef producers service they buy A-grade and then premium, you know the hindquarter you know the fillet all those type of cuts that are seen as very unique and expensive. C-grade is a cow that has been left for more than 20 months, it's been grazing, the beef is a bit harder, the fat changes to about yellowish and the flavour when you braai or things like that you can feel very strong

good flavour. But I think in terms of the texture it's a bit harder, different yes.

ADV JANNIE LUBBE SC: Thank you.

MR SELLO MOTAU: So we spoke about public sectors, we spoke about private sector. Karan Beef does some supply to Woolies already, there's Pick 'n Pay, there's Spar, Shoprite and others that essentially the consortium would have been engaging and talking to.

Development of black agricultural skills base there's an agreement that the consortium will second a number of key resources to work
10 alongside the Karan Beef management team with a view of learning from them and contributing their knowledge for the growth and expansion of the company. The Karan management team will remain in place in the long term in order to maintain continuity and stability at Karan Beef. The only person that will retire after three years is the chairman Mr Ivor Karan.

Mergers and acquisitions; the first transaction has been concluded being Manjoh Ranch which provides an opportunity for Karan Beef to self provide with regards to feed and to achieve better margins by backgrounding weaner calves before putting them in the feedlot.

20 Together with the support of African Development Bank which had an investor conference in November last year in Joburg Karan Beef team will also pursue acquisitions in Botswana and Namibia to achieve what is called regional integration in relation to the supply of beef in those markets. The two countries, being Namibia and Botswana have export permits into Europe and the United States and Karan Beef currently

does not have those and this is in line with what the new shareholders want to see growth in the markets that Karan Beef has not previously been in.

China, UAE and the rest of the continent including South-East Asia, Malaysia is a big market that has been explored by the Karan Beef currently and the team that comes on board will also help with initiatives to make sure that those markets grow. China there's a fair bit of supply into China but there's an opportunity to do more with trade wars with the US and the team is currently talking to them. Karan Beef
10 currently supplies beef into the UAE, Dubai and Abu Dhabi and there's also discussions now for Saudi Arabia to come upstream.

What is critical with this international sales is that the Department of Agriculture in South Africa and their counterparts in those countries play a very important part in basically establishing trading protocols and animal disease controls and a range of issues. So if there's weaknesses on our side for instance in relation to disease control *etcetera*, you see instances whereby with the outbreak of foot and mouth recently there were embargoes in relation to agricultural produce from South Africa into China, UAE and things like that. That's a very
20 critical role played by Government in relation to making sure that market stability is achieved in agriculture.

So those are the markets that we're looking at. Egypt already receives a lot of beef from Karan Beef and it's also geared to grow but the rest of the continent is where African Development Bank is excited to work with Karan Beef to essentially make sure that there's growth and

expansion into that particular market.

And lastly there's an emerging farmers development program which I talk to when I deal with the issues that were approved at the Competition Tribunal. But what is essentially aimed at here is to make sure that Karan Beef seeks to ensure that they can procure more weaner calves from black farmers and this program will ensure that procurement from black farmers will increase from the current estimated 3% to about 15% in the short to medium term. That's in the next three years. The programme is obviously dealt with elsewhere in
10 the submission but those are some of the initiatives as we develop the business case.

So the business case Commissioner is not aimed at selling beef to the Department of Correctional Services only, I think there's a broader plan in terms of what the new promoters have in mind.

MR EMMANUEL LEDIGA: Just a question in terms of this growth strategy, are you going to need to raise capital you know from the PIC or the shareholders and what's your debt capacity?

MR SELLO MOTAU: So essentially the debt carrying capacity of the organisation is dependent essentially on the EBITDA so if you look at
20 the EBITDA currently say R500 million three times that's the rule of thumb, maximum what you can raise, you are safe when you're around a number of two times EBITDA. The African Development Bank is quite interested in providing long term funding in a form of PREVS for Botswana and also providing some expansion capital but that is not done within Karan Beef, we said to them that we will put a company

Karan Beef International which company will then focus on the rest of the continent to basically acquire feedlots in Botswana, acquire feedlots in Namibia. But what is important there you will see the cattle population in those countries have been decreasing over time. There's a very great need to reinvest in those economies in terms of cattle breeding and things like that so that they can continue being able to supply cattle into South Africa but also at the moment they are not meeting their quotas in relation to the EU and also essentially being able to supply into the EU market. So African Development Bank
10 through Karan Beef International will provide that expansion funding.

MR EMMANUEL LEDIGA: So you might not need further capital you know from the PIC?

MR SELLO MOTAU: No, no, no I don't think it's the intention Commissioner.

MR EMMANUEL LEDIGA: There's no intention?

MR SELLO MOTAU: No, no the Karan Beef transaction is big enough on its own and ... (intervention)

MR EMMANUEL LEDIGA: But I'm not saying it's a wrong thing I'm just saying, I just want to find out.

20 **MR SELLO MOTAU:** No, no, no it's not an intention it's a big enough transaction the focus is for the BEE parties to pay down their debt without taking debt on debt, that's correct.

So the next section I deal with how the PIC process in terms of approval process took place.

1. On 11 May 2018 PMC1 gave approval basically and afterwards the

teams engaged the service providers being CDH Steelwise and Genesis Analytics to provide what they call hold humblers letters for them to be able to rely on the due diligence reports that will be coming out of that, out of those service providers.

2. PMC2 gave approval on or about 6 July 2018 and then the investment committee was expected to sit on or about 31 July 2018 for final approval but this was postponed.

The IC meeting eventually took place on 14 August 2018 and it approved the transaction with the condition that the PIC CEO goes back
10 to the seller to negotiate a transaction on the following terms and conditions; That the PIC will own 60% of the SPV; b) consortium will own 30% and then the sellers will retain 10%.

Total price capped at R5.2 billion with a base price of R4.5 billion.

R500 million earn-out payable or *agterskot* payable after 12 months upon achievement of certain operational and financial milestones, the previous terms provided for a guaranteed R500 million but the IC wanted this to be an earn-out or *agterskot*. And then the R200 million to be paid by the consortium after expiry of year 3 on condition that the seller achieved certain EBITDA targets as well as operational targets.

20 If BEE is not able to raise R200 million to exercise its option PIC can exercise this option.

The PIC CEO and the deal team ... (intervention)

MR EMMANUEL LEDIGA: Just hold on there please, just hold on. So the consortium price was around R4.6 billion if I can remember?

MR SELLO MOTAU: That's correct Commissioner.

MR EMMANUEL LEDIGA: And then you agreed finally of R5 billion I think?

MR SELLO MOTAU: For 90%.

MR EMMANUEL LEDIGA: For 90% oh I see. So grossing it up 200% what's the total value?

MR SELLO MOTAU: So I think if you ... (intervention)

MR EMMANUEL LEDIGA: So like if you gross up that 90%?

MR SELLO MOTAU: I think if you take the R4.5 billion as a base price and then you essentially say that it's 90% if you are to gross it up I think because remember the R200 million is discounted deeply, that
10 R200 million should come in at about R500 million but the seller agreed to discount it, so grossing it up won't really give you the ... (intervention)

MR EMMANUEL LEDIGA: R5 billion.

MR SELLO MOTAU: That number.

MR EMMANUEL LEDIGA: R5 billion is that correct?

MR SELLO MOTAU: R5 billion is for 90% essentially.

MR EMMANUEL LEDIGA: Yes because if you gross R4.5 billion to 100% it's R5 billion as far as I can see.

20 **MR SELLO MOTAU:** Okay that's correct.

MR EMMANUEL LEDIGA: But we can double-check that.

MR SELLO MOTAU: We can double-check that ja.

MR EMMANUEL LEDIGA: Yes, yes so the price is R5 billion which was agreed between you and the seller?

MR SELLO MOTAU: For 90%.

MR EMMANUEL LEDIGA: For 90%.

MR SELLO MOTAU: That's correct.

MR EMMANUEL LEDIGA: So if you gross it up further it's more than R5 billion?

MR SELLO MOTAU: It's more than R5 billion yes.

MR EMMANUEL LEDIGA: Which gets closer to the R6 billion that the funder was looking at.

MR SELLO MOTAU: To 5.5.

MR EMMANUEL LEDIGA: To 5.5.

10 **MR SELLO MOTAU:** To 555 but then you basically discount the R200 million for the remaining 10% you cap it at R200 million and you get to 5.2.

MR EMMANUEL LEDIGA: R5.2 billion?

MR SELLO MOTAU: That's correct.

MR EMMANUEL LEDIGA: Oh I see, I see so it's why it was capped at the 5.2?

MR SELLO MOTAU: That's why it was capped there.

MR EMMANUEL LEDIGA: I see.

20 **MR SELLO MOTAU:** Another consideration is that when you, on the valuation that was done you basically had the range from RMB saying 4, 4.5 that's the range so the guys looked at the upper range which is 4.5 that's for 100% non-controlling stake in the company and then they basically said that okay we'll add a control premium because we'll buy 90% and basically it reconciles back up to that R5.2 billion but as the deal evolved that other balance became a pure earn-out or *agterskot*.

MR EMMANUEL LEDIGA: Okay let's proceed we might come back to this one but it's fine thank you.

MR SELLO MOTAU: Yes so 28, the PIC CEO and the deal team negotiated the final deal terms with the seller and reached an agreement on terms and conditions proposed by the IC during the middle of August 2018.

ADV JANNIE LUBBE SC: Can I just interrupt you there.

MR SELLO MOTAU: Ja.

ADV JANNIE LUBBE SC: Did the CEO, the then CEO of the PIC did he
10 play an active role with the deal team to clinch the final deal?

MR SELLO MOTAU: There was one meeting that took place in Pretoria where he invited the seller to give him feedback on the outcome of the meeting of the investment committee and said that the R6 billion is not really approved these are the new terms and then basically the seller went away to say that look I'll consult with the team and my family and come back to you and he came back and said look we can do a deal on this basis.

ADV JANNIE LUBBE SC: Thank you.

MR SELLO MOTAU: I understand that this final deal terms was
20 submitted to IC for the final approval based on the above terms via round robin resolution on or about 23 August 2018.

We received the deal Approval Letter dated 23 August 2018 from the PIC on 27 August 2018 which signified final approval of the transaction by the Investment Committee. What was not clear in the approval was that it did not deal adequately with the funding terms for the

consortium, for the BEE consortium other than approval of the call option for the acquisition of the seller's 10%, the remaining 10% of the seller.

The funding discussions between the PIC and the consortium occurred as follows; on 3 September ... (intervention)

MS GILL MARCUS: Sorry can I ask you were you expecting that, the detail of the funding terms to be in that approval because this implies that you then had to negotiate it afterwards?

MR SELLO MOTAU: That's correct, we, normally the process
10 Commissioner is that once the deal starts there's something called a term-sheet. You receive a term-sheet which says this is the deal, this is the structure, this is your funding, pricing and things like that and you negotiate it and sign it with the PIC. But in this case that was not available it only was e-mailed to the consortium on the 3rd September 2018 after IC approval.

On 3 September 2018 we received a funding term-sheet from the PIC deal team contained detailed terms and conditions of funding the consortium. Key terms proposed in the term-sheet were onerous to the consortium and thus not accepted. This term-sheet is attached as
20 annexure KB2 to the submission.

Key challenges with the ... (intervention)

CHAIRPERSON: Mr Lubbe we don't have these annexures, I assume they will be made available to us?

MR SELLO MOTAU: They will be made available Commissioner.

ADV JANNIE LUBBE SC: Can I just enquire have they been made

available Mr Commissioner, are they with you?

MS GILL MARCUS: Sorry can I just come back to this question of the funding terms. So the implication of that is that the Committee simply approved the investment but how it would be funded and the detail of that was left till afterwards for you to negotiate?

MR SELLO MOTAU: The funding terms for the BEE consortium basically we approved a global amount and said R5.2 billion PIC will take 60% the sellers will retain 10% and then BEE will be funded to an extent of 30%.

10 **MS GILL MARCUS:** Sure but you didn't know the details and the costing structure or anything else?

MR SELLO MOTAU: No we didn't know those things.

MS GILL MARCUS: Does that imply that the PIC also had not worked that out, that it was post-approval that this was worked out?

MR SELLO MOTAU: I think they had essentially applied their minds to it but the key thing is that it's normally formalised in a form of a term-sheet without that it's guesswork.

MR EMMANUEL LEDIGA: Just another question here, so in terms of the total payment that this consortium will pay the PIC has kept it at
20 R5.2 billion?

MR SELLO MOTAU: That's correct.

MR EMMANUEL LEDIGA: And this is what the PIC, this is what this consortium will pay?

MR SELLO MOTAU: That's correct.

MR EMMANUEL LEDIGA: Finally.

MR SELLO MOTAU: That's correct.

MR EMMANUEL LEDIGA: Not the R6 billion that the seller has been you know hung up on and all that?

MR SELLO MOTAU: No it's not R6 billion.

MR EMMANUEL LEDIGA: Alright and just in terms of deal structure, just break it down in terms of the equity and the debt portion and talk a bit about the dividends coming from the company, if you're going to deal with it later it's fine but if not maybe we can look at that?

MR SELLO MOTAU: So essentially the deal is structure along the
10 following lines Commissioner; one of the companies is a farming operation so it's a sole trader, the feedlot is a sole trader. So we're basically going to create what is called Karan Beef Farming Pty Ltd which will buy the assets of the sole trader being the farms, the cattle, and everything into that particular new company. So in the split of the R5.2 billion PIC on its own takes 60% say of R5 billion which is round about R3 billion that's essentially PIC's own shareholding on behalf of its clients, it's clients being the UIF, Compensation Fund and the GEPF.

So that is what PIC will hold.

MR EMMANUEL LEDIGA: This is straight shares, straight...

20 **MR SELLO ADSON MOTAU:** That's equity.

MR EMMANUEL LEDIGA: The equity, yes, it's straight equity.

MR SELLO ADSON MOTAU: And it comes in, in the company called Pelo Capital Holdings which is an SPV that has been set up for the acquisition of Karan Beef. And in Pelo Capital Holdings then you've got Pelo Agricultural Investment which is the BEE company that is

owned by the promoters. I'm talking about the structure that was in the term sheet that was signed. Pelo Agri, Pelo owned 15% of the SPV funded using debt from the PIC and then the other 15% will be owned by Workers Trust as well as community trust. So that's a 30% in an SPV.

MR EMMANUEL LEDIGA: Led by the PIC also through that.

MR SELLO ADSON MOTAU: Funded by the PIC, that flows into Pelo Capital Holdings.

MR EMMANUEL LEDIGA: Yes.

- 10 **MR SELLO ADSON MOTAU:** So in a nutshell that's how the structure is set up but what is important to say is that Pelo Capital Holdings, because an SPV, the push down of the money from Pelo Capital into Karan Beef Holdings flows in a form of equity and shareholder loans. There's no senior debt that flows down from the structure.

MR EMMANUEL LEDIGA: Okay.

MR SELLO ADSON MOTAU: So shareholder loans, maybe shareholder loans, but naturally by operation of the law they are subordinated in favour of the other senior lenders.

MR EMMANUEL LEDIGA: Alright okay.

- 20 **MR SELLO ADSON MOTAU:** That is how the structure was put together.

MR EMMANUEL LEDIGA: Ja, no, no, it's fine, I think we'll see there, you know?

MR SELLO ADSON MOTAU: Yes.

MR EMMANUEL LEDIGA: In terms of the dividends or, you know, talk

a bit about that.

MR SELLO ADSON MOTAU: So I think I also talk about it later – in fact, yes, at the bottom of page 19, if I may continue and then I'll get to it.

MR EMMANUEL LEDIGA: Yes, please. Yes please.

MR SELLO ADSON MOTAU: So the few challenges with proposed vanilla funding structure which are contained in a PIC term sheet were that the funding for the consortium at that point, if you look at a total amount of R5 billion was about R1.75 billion to the BEE SPV. Now the
10 PIC wanted the promoters to provide personal suretyships on R1.75 billion and we said but these guys don't own that much money for them to be able to provide personal suretyships to that level.

The second one was that the funding rate was South African Government Bond, a ten year bond, plus about 700 basis points and percent which came to about 16.5% and the consortium felt that this was exorbitant given the nature of the industry. Agriculture is not like mining where today you can have super returns because of a commodity boom, it's a very steady industry with growth on average at inflation rates.

20 Now if the company grows at around inflation rate and then your debt facility grows at about 16% you're basically having a funding gap that you create from day 1, huge funding gap and we said to them that look, guys, we're going to not be able to fund this because even the dividends that we calculated, we said dividends that will come from this company on average, say R500 million per year, between R300 and

R500 million a year, BEE essentially will need to take this as an option and hope that, you know, the company runs and then from there they can sell and make some money.

We said that look, I mean, if you lend money to an entity knowing full well from the beginning that they're not going to be able to pay it back is it not reckless lending, that we've – run the model, we've done the calculations, you can see that this instrument will grow from R1.75 billion to R3.5 billion in seven years.

For the BEE parties to break even it means that the value of
10 Karan Beef would have moved from R5.2 billion to 12 billion. For them to just break even and walk away with zero. So we said this is not a sustainable funding model, let's discuss about a different model. So essentially that is ...[intervenes]

MR EMMANUEL LEDIGA: Sorry, ja, so basically there is no BEE deal there because ...[intervenes]

MR SELLO ADSON MOTAU: No.

MR EMMANUEL LEDIGA: You know, the numbers don't stack up.

MR SELLO ADSON MOTAU: No, they don't stack up.

MR EMMANUEL LEDIGA: Because of the pricing that the PIC has
20 given you.

MR SELLO ADSON MOTAU: Because of the pricing and because of the industry that we are in...

MR EMMANUEL LEDIGA: Yes, yes.

MR SELLO ADSON MOTAU: ...we cannot really with a clear conscience say that Karan Beef if going to grow at 12% per annum.

Beef is a very sensitive industry. Once prices of beef start increasing out of control people go to eat other substitutes and so we don't expect in a price – long term pricing model of beef that it will essentially be like a commodity like a manganese where it can increase 50%, 60%, 100%. So we needed to have a – what you call a very conservative BEE funding structure that takes into account all of those realities.

MR EMMANUEL LEDIGA: Okay, thank you.

MR SELLO ADSON MOTAU: “The consortium met with the PIC deal

10 team on 12 September 2018 to explore alternative funding structure. The consortium proposed a funding structure including investment holding company structure in line with what is normally used in a private equity sector. The structures agreed in principle with the deal team subject to the consortium providing a written motivation for a new BEE funding structure. We wrote a letter dated 17 September 2018 to the PIC CEO proposing an alternative deal structure based on our discussions with the deal team. This letter is attached hereto as annexure
20 KB3.”

Basically where we say that let's Pelo Agri contribute R50 million, which is essentially 1% of the R5 billion required by 2.2% of the company and essentially put a team together that will go in, manage the asset on behalf of itself and the PIC and then you look in seven years and say that after year seven, the value of the shares would have

grown say from R5.2 billion to – if it's R8 billion, you calculate the return that the PIC requires and then the upside created there from you Pelo would basically participate to the tune of 20% of the net profit in that structure.

So they thought that it makes a lot of sense, RMB thought that it makes a lot of sense, they were quite involved in helping develop that particular structure which we thought that it's sustainable and sustainable on the basis that even after seven years or even any time during the period of seven years, if this team is not performing, the value team that said that we'll go in, we'll implement transformation, we'll do emerging farmers development programme, will grow international markets, if they're not performing, PIC is well within its rights to say guys, you are not performing, we're cancelling the management agreement we're going to find somebody else who can essentially do a much better job than you. So that is the structure that we felt is sustainable that we put forward and it was accepted.

So the proposed deal structure was approved with by amendments and a deal term sheet was amended, approved by PMC2, I understand it was approved and signed by the consortium and the PIC CEO on or around 10 October 2018 subject to final approval of the IC. This deal term sheet is attached hereto as KB4. So it was – it became clear that that step of BEE funding was missed at that IC so it needed to go to the next IC for finalisation. A copy – okay, so I think the shareholding structure we spoke about but we've also attached that copy of the shareholding structure as annexure KB5.

“During the period when we were busy negotiating with the PIC funding terms for BEE, legal teams and advisers were in the process of drafting relevant legal agreements between Karan Beef, PIC and the BEE consortium. The following agreements between Karan Beef, Karan Beef (Pty) Ltd, PIC, Pelo Capital Holdings, that is acquiring SPV and Pelo Agricultural ventures being the BEE promoter’s company were negotiated, settled and finally signed on 22 October 2018.

1. Sales of shares and claims agreement.
- 10 2. Is the sale of business agreement.
3. The framework and implementation agreement.”

Those were signed on 22 October 2018.

Due to the strategic role ...[intervenes]

MR EMMANUEL LEDIGA: Just another quick one.

MR SELLO ADSON MOTAU: Yes, sir.

MR EMMANUEL LEDIGA: Just in terms of the Workers Trust, I would assume that these are Karan Beef Workers.

MR SELLO ADSON MOTAU: That’s correct.

MR EMMANUEL LEDIGA: Did Karan Beef participate in facilitating
20 this, I mean, these are like long serving workers, you know, who have made it successful.

MR SELLO ADSON MOTAU: Ja, so through you, Commissioner, what we’ve decided is that this is a condition subsequent to the deal happening, so for you to set up a properly well-governed Workers Trust you need to spend a lot of legal money and set up trusts and all of

those things. So we said that this Workers Trust will be dealt with within 12 months of financial closure and then it is at the sole discretion of the PIC because people would ask who is in the Workers Trust, is it a community trust and all sorts of questions. So we said PIC you'll deal with it and perhaps all you need to find out is who are the workers, the criteria, but drive that process for us, it was we didn't want to get involved in sort of questions and who is that and all of those things and we felt that it's PIC's competency to have structure that - given that they've done a lot of these things.

10 **MR EMMANUEL LEDIGA:** But did Karan Beef participated in sort of helping the funding of the Workers Trust?

MR SELLO ADSON MOTAU: No, it doesn't exist as of today, we will do it once financial closure has occurred but PIC Karan Beef and the consortium will basically work together but this would be led by the PIC.

MR EMMANUEL LEDIGA: So okay, okay.

MR SELLO ADSON MOTAU: "Due to the strategic role that Karan Beef plays in the market the deal was announced in the main stream media on 23 October 2018 under the heading "PIC and Pelo by majority stake in Karan Beef for R5.2 billion."
20

All newspapers carried that title.

"Various interviews on the radio took place to give more details of the transaction and that it was subject to the fulfilment of the remaining conditions precedent, the major one being the approval by the Competition Commission and tribunal.

And the other major one that I forgot to mention here, that we thought is minor, was the funding agreements between Pelo and the PIC.

“Negotiations continued and Pelo Agri, the PIC and Karan Beef on the remaining agreements and finalisation of the conditions precedent. So we had weekly calls with teams from the PIC, the legal teams, to basically go through the conditions precedent. The original Long Stop date of the transaction was 31 January and the PIC needed to make sure that various agreements with Pelo were finalised and presented to the investment committee before that date.”

Long Stop date Commissioner, is a date when the deal is cancelled and falls apart.

ADV JANNIE LUBBE SC: Mr Commissioner, is this a convenient moment to take the lunch adjournment?

CHAIRPERSON: We’ll take an hour. We’ll adjourn now until two o’clock.

ADV JANNIE LUBBE SC: Thank you.

CHAIRPERSON: Thank you.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Yes, Mr Motau, you’re still under oath, I remind you that you are still under oath.

MR SELLO ADSON MOTAU: Yes, sir.

ADV JANNIE LUBBE SC: Thank you. Mr Motau, we stopped before the adjournment just before paragraph 36. Just to explain to the

Commission, there were delays in this transaction, there was a rigorous process PMC1, PMC2, IC, etcetera, new terms negotiated and it was then all – the Long Stop date set for 30 January 2019. If you can just start at paragraph 38 then and can I just say, I'm going to take you through this document by skipping some of the paragraphs but you can take it that the Commission has this statement, they have read the statement and they will take into account everything that is stated in the statement.

MR SELLO ADSON MOTAU: Thank you, Commissioner.

10 “With the agreement in place, which agreement essentially involved the seller and PIC and the consortium renegotiating a transaction to say the R500 million that was supposed to be paid in 12 months is now *agterskot* and profit targets were set to say that if you achieve x amount and zero, I think below R400 million and above R610 million you'd earn 100% of the R500 million. So that was agreed and the PIC team undertook to present the final terms of the transaction to the IC which was scheduled to take place after the scheduled board Ma'am on 1 February 2019.

20 Taking into account that a board meeting was scheduled to take place after the expiry of the Long Stop date the PIC and the sellers agreed to extend the Long Stop date to 15 February 2019 in order to give the PIC and Pelo Agri an opportunity to finalise the agreements after the approval of the funding agreements and placing that R500 million into an escrow

account which was requested by the seller.”

ADV JANNIE LUBBE SC: What is important is what happened on the 30 January. Can you just tell the Commission?

MR SELLO ADSON MOTAU: On 30 January 2019 one day before the scheduled Long Stop date an anonymous email was sent from the account of James Noko levelling allegations of corrupt against the Karan Beef transaction.

ADV JANNIE LUBBE SC: Those are the allegations also involving you?

10 **MR SELLO ADSON MOTAU:** That’s correct, sir.

“On 1 February 2019 the scheduled board meeting took place and the entire board of the PIC resigned and a scheduled IC meeting did not take place to deal with the proposed amendments to the Karan Beef transaction. This came as shock to all of us who had been involved in this transaction for close to 18 months at that point but we remained hopeful that a transaction would be presented to the new board as soon as it is appointed.”

20 **MR EMMANUEL LEDIGA:** Mr Motau, can you mention the paragraphs as you go along so that we can follow?

MR SELLO ADSON MOTAU: Sorry, I’m on paragraph 40, Commissioner.

MR EMMANUEL LEDIGA: Ja.

MR SELLO ADSON MOTAU: Paragraph 40.

MR EMMANUEL LEDIGA: Okay, okay.

MR SELLO ADSON MOTAU: Ja. I'm on the last sentence:

“As a result the relevant sale documents had been signed while funding documents had not been finalised placing the transaction into a precarious position.”

I must just explain the process of signing the sale agreements and the – so the sale and sale of shares and claims agreement and the sale of business essentially captured the whole transaction which was between PIC, the BEE consortium and the Karan family but on the side after signing a term sheet on the 10 October and then the sale agreements
10 on the 22 October it was made a condition precedent that before closure the PIC and BEE would have concluded their funding agreements and we basically went through but this got delayed.

“During the February 2019 the PIC executive...”

I'm on 41 now.

“...the PIC executives decided to take a new approach with regard to the approval of the transaction. Firstly, they said a deal should be discussed at PMC2 again to deal with the proposed amendments to the funding terms. PMC2 convened on 18 February and essentially...[intervenes]

20 **ADV JANNIE LUBBE SC:** Sorry to interrupt you. Was that necessary as there was already an agreement?

MR SELLO ADSON MOTAU: The agreement containing the funding terms was signed on 10 October 2018 after a PMC meeting.

“PMC convened on 18 February and essentially reversed some of the decisions of the previous PMC2 regarding the

management agreement without considering the justification of Peló Agri and why pure debt structure is not suitable for this transaction. PMC also questioned the reasonableness of the proposed transaction fees of about 1.5% of the deal and requested that it be kept at 1%. This decision did not take into account any guideline as to what market standards are in relation to transactions of this nature and failed to take into account the complexity, duration of the mandate, the size of the teams in place as well as other factors that were involved.

10 PMC also deliberated that the call option that is exercisable in three years...”

Sorry.

“They also deliberated on that particular call option and approved it despite the fact that this call option was already approved by a subcommittee of the board basically seeking to either reverse that decision or confirm it.”

We don't know for what reason.

“Essentially they sought to deliberate on a decision of the board subcommittee with a view of endorsing or reversing.

20 They then rejected all the other enhancements contained in the term sheet approved by PMC2 on 10 October that aimed to model a transaction along private equity lines because there was no precedent for the type of structures in the previous PIC transactions. This decision was taken without taking into account why the transaction was structured in the manner it

was.

The correspondence from the PIC deal team dated 19 February 2019 regarding the outcome of PMC2 meeting is contained in the attached annexure KB6 hereto.

Pelo Agri responded to the PMC decision in a letter dated 20 February 2019 and this letter is attached hereto as annexure KB7.

10 The PIC team agreed to schedule another PMC2 meeting and an investment committee soon afterwards to discuss the proposals contained in the Pelo Agri letter dated 20 February 2019.

The PMC2 meeting took place on 1 March and the committee took a resolution to recommend that confirmatory due diligence and updated valuation be undertaken as 6 months had expired since the approval of the deal by the investment committee.

At the time of the PMC2 meeting on 1 March six months had expired a day before and strong representations from Pelo Agri contained in this letter dated 20 February 2019 were completely ignored.

20 On 7 March Pelo Agri wrote another letter to the acting CEO of the PIC making representation why the six month rule cannot be applied in this case. Pelo continued to argue that all the delays in the transactions are attributable to the turmoil taking place within the PIC.

These representations as contained in the letter are annexed

hereto as annexure KB8 were completely ignored by the IC during its meeting on 11 March 2019 and a decision was taken to perform a confirmatory due diligence and valuation as well as refer all the allegations contained in the James Noko email to the email to the social and ethics committee despite the fact the legal team had done and enhance know your client procedures and compliance procedures in terms of FICA around February 2019 and found that allegations of fronting to be baseless.”

10 **ADV JANNIE LUBBE SC:** Was there indeed a FICA certificate issued?

MR SELLO ADSON MOTAU: The issued a FICA compliance certificate and that what I understand was submitted to PMC2 as well as IC.

“IC duly approved a proposal by PMC. Social and ethics committee convened on 3 April and resolved not to make any pronouncements on the James Noko allegations because the PIC Commission of Inquiry is investigating those allegations. PIC deal team was authorised by IC to appoint consultants to perform confirmatory due diligence and valuation on 11 March 2019 but none of the service providers had been appointed.”

20 As at I think 21 May, it's today, I think it's meant to say 11 May 2019. That is more than two months after approval.

ADV JANNIE LUBBE SC: Who is going to pay for this, Mr...?

MR SELLO ADSON MOTAU: The PIC agreed to pay for this and they ran the normal tender process but two months later these consultants have not started work, they've not been appointed.

“During a formal meeting with the seller Pelo Agri and the PIC team led by the Acting CEO on 16 April the PIC team stated that it remains committed to the conclusion of the Karan Beef transaction as per the original approval of the IC. However, the PIC team stated categorically that the team will not be in a position to implement the transaction until the PIC Commission of Inquiry finalises its investigation of the James Noko allegations and provides a formal report to the PIC as requested by the PIC board during its meeting on the 1
10 February 2019.”

ADV JANNIE LUBBE SC: Thank you. You have a request to the Commission in paragraph 49 of your submission.

MS GILL MARCUS: Sorry, can I just clarify purpose, when you say the PIC Commission of Inquiry, is that the PIC’s own commission looking into that?

MR SELLO ADSON MOTAU: No, this Commission, Commissioner.

MS GILL MARCUS: This Commission?

MR SELLO ADSON MOTAU: Yes.

CHAIRPERSON: But we’re certainly not going to submit a report to the
20 PIC. I thought it’s the PIC team that you’re talking about.

MR SELLO ADSON MOTAU: Commissioner, they said that the team will not be able to implement the transaction until this Commission issues PIC with a report on the allegations contained in the James Noko email. As the PIC board of the 1 February 2019 had requested, I found it odd, but I mean that was the – that is the position from the

PIC.

MS GILL MARCUS: Can we ask you, Adv Lubbe, to look into that because I'm - we're not aware of any request of that nature and certainly it would be totally inappropriate and outside our terms of reference completely.

ADV JANNIE LUBBE SC: Absolutely.

MS GILL MARCUS: That's not what we are doing.

ADV JANNIE LUBBE SC: Absolutely Ms Commissioner. I must put on record that I've been approached a couple of times by a member of the
10 board requesting whether there has been any result in these investigations and the position is, at this stage there is no definite answer to who Mr Noko or Noko is.

MS GILL MARCUS: But that's not their business in relation – I mean, the board needs to do whatever it needs to do but the terms of the Commission, this Commission, are very clear.

ADV JANNIE LUBBE SC: Correct.

MS GILL MARCUS: And the report is to the President.

ADV JANNIE LUBBE SC: Correct.

MS GILL MARCUS: It is not a response to help the PIC in relation to
20 uncovering its internal affairs.

ADV JANNIE LUBBE SC: You're correct, absolutely correct.

MS GILL MARCUS: So perhaps can we just ensure that this matter is clarified and if they wrote a letter to us on the 1 February perhaps we can get a copy and see what exactly they were dealing with so that we can respond appropriately to that.

ADV JANNIE LUBBE SC: We'll do that, thank you, Mr Commissioner.

MS GILL MARCUS: I'm also quite surprised that this is a statement as to why the Karan Beef deal cannot – I think that if that's the case we would need to look into that as well because...

ADV JANNIE LUBBE SC: I think that is the submission and the request from the witness in his last paragraph.

MR SELLO ADSON MOTAU: Okay. Do you want me to read it?

ADV JANNIE LUBBE SC: Ja.

MR SELLO ADSON MOTAU: Okay. On the last paragraph 49:

10 “As a result this transaction has been placed in limbo. It's likely to derail the transaction despite the very positive outcomes that a transaction could have for the economy and transformation in the agricultural sector. Since this is a live transaction where the Long Stop date is currently 22 May 2019, I humbly request this Commission...”

And I'm out of order but I'm going to read it because...

 “I humbly request this Commission to issue an interim report on its findings on the Karan Beef transaction so that the deal can be finalised either way. The need for certainty in this
20 transaction is particularly important as transaction costs continue to rise.”

We've been on this for two years in July, I think it's two years in July and with what I've heard yesterday, it seems like we're going to be in for another long haul but this is not really an efficient way of doing transactions.

ADV JANNIE LUBBE SC: It would seem to me – and correct me if I'm wrong, that the whole transaction was derailed by the Noko email.

MR SELLO ADSON MOTAU: That's correct, Commissioner.

ADV JANNIE LUBBE SC: Mr Commissioner ...[intervenes]

CHAIRPERSON: Yes, you see even if we were able to issue and interim report on this specific matter, you know, it would go to the President not to anyone else and it will be in the hands of the President to distribute it if he wants to.

MR SELLO ADSON MOTAU: That's correct.

10 **ADV JANNIE LUBBE SC:** Thank you, Mr Commissioner. We're going to deal now with a second transaction and it has been dealt with in detail in the submission but the purpose of this evidence is not to really explain the transaction but to present evidence to the Commission of what is happening inside the PIC with certain transactions. That is the purpose of the evidence. So, Mr Motau, can I request you again – you can accept that the Commissioners have read the statement, just start your evidence by briefly explaining the nature of this transaction and then we'll take it from there.

20 **MR SELLO ADSON MOTAU:** Thank you, Commissioner. So this transaction also originated in 2015. Export Trading Group is one of the major companies in the agricultural sector on the continent operated at that point in 26 African countries. They basically do trade in agricultural commodities and agricultural inputs being fertilizer, seed, chemicals, basically supply those to the farmers. So sometimes in 2015 PIC developed a strategy to invest across the continent, what

they call a Pan African investment mandate which was not really in place before and in my discussions with some of the guys at the Land Bank about a fertilizer producer based in the North West we basically came across the ETG team and we were advised that, you know, this is good company to buy because it's Pan African and if you have a relationship with them you don't have to really come along to Land Bank and buy profit, you can essentially buy this entity in collaboration with ETG which I approached for understanding whether they could sell an equity stake sometimes in the second half of 2015 and they said
10 yes, but the problem is that they were already engaged in discussions with three international players that were – that had made offers to buy the fertilizer division of the company, 51%.

So I requested that: Look, give us a chance. And they said: Where are you going to get funding? And I said: Look, PIC has got now a PAN-African investment strategy. I will approach them to put money into that and essentially partner me as to be co-investors in this.

They said: Okay. No, that is fine. I went to the PIC and the PIC said to me: Give us a proposal. Which proposal was a document I
20 submitted as an investment proposal as to how this transaction can essentially help them ...[intervenes]

ADV JANNIE LUBBE SC: Can you just refer the Commission that you are on paragraph 61 of your statement.

MR SELLO MOTAU: I am going through it quickly. So I saw it as a platform that could be used for them to invest in other African countries

and essentially they like the proposal which I have attached as ETGI.

ADV JANNIE LUBBE SC: No.. Before you proceed. I would like you to mention who was the executive assistant of Dr Matjila at the time when you presented this proposal?

MR SELLO MOTAU: So when I presented this proposal I spoke to Dr Matjila initially and then he said I must submit the proposal to his executive assistant, Mr Wellington Masekesa.

He called me later to essentially give me a signed letter of expression of interest, Wellington Masekesa around 9 September 2015
10 and essentially that letter said:

“The proposed transaction constitutes a meaningful participation in the agri business section in line with our developmental investment mandate. Therefore would like to express our non-binding interest in the proposed transaction. The PIC proposed participation in the transaction, is subject to the outcome of a due diligence and approval by relevant committees within PIC. Copy of this non-binding expression of interest is attached as ETG2...”

ADV JANNIE LUBBE SC: Who signed the letter?

MR SELLO MOTAU: Dr Matjila.

20 **ADV JANNIE LUBBE SC:** Thank you.

MR SELLO MOTAU: Furthermore, I scheduled calls with role players within ETG in Tanzania, locally to talk about their proposed acquisitions. Some of their shareholders were ...[indistinct] and Pembani Remgro.

ADV JANNIE LUBBE SC: You can then move to phase 2 of the due

diligence process.

MR SELLO MOTAU: The transaction went through normal due diligence processes. Essentially PMC1 said around September 2015 for approval for commence due diligence.

Deloitte and Norton Rose Fulbright were appointed as service providers. In October 2015, the PIC Deal Team introduced us to Tirisano Partners to act as transaction advisors that we will work from the teams from Theko.

Deloitte, Norton Rose and PIC in order to coordinate the entire
10 investment process on behalf of all the parties.

ADV JANNIE LUBBE SC: Did you know of this Tirisano Partners?

MR SELLO MOTAU: No, not all, Commissioner.

ADV JANNIE LUBBE SC: And can you just tell...? It is in the paragraph, but just tell who they were represented by?

MR SELLO MOTAU: They were represented by a gentleman called Kingdom Mugadza, Lauren Rawlings, Lilian Oyando and another gentleman called Taf X. I forgot his surname. I cannot find his surname anywhere.

ADV JANNIE LUBBE SC: It is fine.

20 **MR SELLO MOTAU:** 19 October, after the appointment of due diligence service providers or during the same time, we received an Engagement Letter from the PIC that was signed and it is attached hereto as ETG3.

ADV JANNIE LUBBE SC: Signed by?

MR SELLO MOTAU: Mr Roy Rajdhar. Material terms of it. PIC would

acquire 50% which is 15.5% of the deal and then they will provide senior rankings secured facility to Theko for 15.5%. Total estimated deal value at that point was about \$ 115 million.

And then the Engagement Letter said that Theko shall be responsible for payment of any fees and expenses incurred in respect of the assessment and valuation services rendered by any such independent consultant to PIC.

If required and as agreed by parties such fees shall be capitalised and funded out of the capital raise to fund the transaction.

10 Such fees to be kept at R10 million and should the fees exceed the amount specified in this paragraph, PIC shall be required to get written approval from Theko for the excess of the amount.

ADV JANNIE LUBBE SC: So, if I understand this correctly, if this deal was successful you would have been in for R10 million?

MR SELLO MOTAU: That is correct, Commissioner.

“It is worth mentioning that the original Engagement Letter from the PIC had proposed that the costs be kept at \$5 billion and those should be underwritten by Theko alone.

Even though the PIC was an equal shareholder in the transaction, we
20 rejected the amount as to be too exorbitant and very unrealistic to fund and then it was reduced to R10 million which was also unreasonable high.

We agreed to pay a participation fee of 1% on the funding that was given to us and then we would be responsible for payment of any legal fees incurred by the PIC in connection with the execution of the

transaction.

In the term sheet also, they basically said ETG will grant Theko and PIC a three month exclusivity period, starting from 23 October 2015 to enable PIC to perform a comprehensive due diligence, independent valuation of the company and obtain management and board approvals of the transaction.

ETG agrees not to conclude the sale of the company to any other person until 23 January 2016...

ADV JANNIE LUBBE SC: So there was an exclusivity agreement?

10 **MR SELLO MOTAU:** That is correct

ADV JANNIE LUBBE SC: All right. Thank you.

MR SELLO MOTAU: The amended mandate letter was signed between us and ETG on 22 October and sent to the PIC. On 5 December, we visited ETG operations in Malawi, Lilongwe together with ETG and PIC. PIC was represented on this mission by Mr Royith Rajdhar and Mr Masekesa.

On 8 to 12 December 2015, we visited Dubai and Tanzania as part of due diligence review. We met locally DD's teams in those countries.

20 **ADV JANNIE LUBBE SC:** Were the PIC gentleman also on these...?

MR SELLO MOTAU: The Deal Teams was presented in Tanzania and in Dubai was led by a gentleman called Mr Phumelo Maseko with *Mr Eger Gemwatse* and I think *Mr Vuyo Leroke* from Legal, having attended that mission also.

Hosted by the Chairman of ETG Group Tanzania. We also met

with the KPMG Audit Partners responsible for ETG and visited operations based in the port of Dar Es Salam.

In Dubai we met the executive team of the fertiliser cluster as well as other professional advisors of the group.

ADV JANNIE LUBBE SC: So to sum this up. There was an extensive investigation, travelling to the different countries and looking at exactly what is going on there.

MR SELLO MOTAU: That is correct. And Tirisano and Theko also paid for their own costs for this mission.

10 **ADV JANNIE LUBBE SC:** And then you go to paragraph 74.

MR SELLO MOTAU: 10 December, initial drafts of the legal due diligence reports from Deloitte as well as Norton Rose Fulbright. We reviewed and submitted to PIC after giving input in preparation for PMC2 which was set during December 2015.

The transaction was approved by PMC2 subjected to some queries relating to management accounting information provided by ETG.

20 These queries were referred to ETG and KPMG Tanzania for review and updating. We received updated information in January 2016.

19 January, we received a signed time sheet from the PIC, signed by Mr Rajdhar which entailed an acquisition of 49% which we had negotiated from 30% to 49% of the issued share capital of the inputs holdings company by the investors, being GEPF and Theko. A copy of this said time sheet is attached hereto as Annexure ETG4.

ADV JANNIE LUBBE SC: So just to make it clear. The investors being GEPF and Theko?

MR SELLO MOTAU: Just that is correct.

ADV JANNIE LUBBE SC: Thank you.

MR SELLO MOTAU: On the same day we met StanChart in Sandton and briefed them on the feedback – on the progress and they were happy. Based on the new terms, GEPF would acquire 39% of the existing equity at a pro-rata valuation of the purchase price and Theko received funding from the PIC to acquire 10% of the equity on a pro-rata valuation to the purchase price.

Changing the shareholder structure from an equal shareholding between PIC and Theko to the current 80% in favour of PIC and 20% in favour of Theko. It has never been discussed between the parties but rather unilaterally imposed by the PIC to this day.

ADV JANNIE LUBBE SC: Is the point that it was an unilateral decision? It was never discussed or agreed between the parties?

MR SELLO MOTAU: No. It is take or leave it in most cases. So the revised structure defeats the whole purpose because we thought of it operational involvement in investee companies by entrepreneurs funded by PIC.

You would notice Commissioners that if a Chinese company buy a company in South Africa they send a delegation of employees from China to work in the investment. Germans, American do the same.

So we thought that there is an opportunity for the PIC to invest and also second black professionals and other South African

professionals working in those companies as part of the preservation of the investment but that was not the case.

I think this was just a case of passive investment. So we sent it to the PIC and because we have taken the risk of underwriting the due diligence costs, PMC received update information from Tanzania, KPMG and ETG.

Then recommended the transaction to the next phase but at that point the PIC Team stopped communicating with me which was about late February 2016.

10 We have made several telephone calls to various members of the PIC Deal Team with no success. We was worried that as the guarantor of due diligence costs as stipulated in the signed Engagement Letter, they could demand money from us if the deal failed.

ADV JANNIE LUBBE SC: So is the position that you made these calls and they would not just answer or respond?

MR SELLO MOTAU: No, they did not respond. After numerous attempts I met with the PIC Deal Team Leader, Mr Phumelo Maseko who told me that the deal has been approved and will be presented at the
20 next PIC meeting and the condition from PMC was to remove Theko from the deal since we had no agricultural experience.

ADV JANNIE LUBBE SC: Was that the first time that you were informed of this?

MR SELLO MOTAU: Ja, that was the first time. But he said that there was a story behind this. It was not really true. So I was informed that

once the deal has been approved by the Investment Committee they will run a process to bring another consortium or partner to take the 10% previously agreed to be allocated to us.

I was very shocked to learn about this proposed approach. I was informed that the PIC meeting that took the decision to take Theko off from the deal was chaired by then CFO, Matshepo More and then Dr Matjila was also in attendance.

So I asked the PIC how Theko could be removed from a deal it originated after the guaranteeing all due diligence costs and of the
10 investment process and also being issued with a timesheet and Engagement Letter.

I was told to talk to Dr Dan or Executive Head of Development Investments, Mr Royith Rajdhar.

ADV JANNIE LUBBE SC: Who told you that?

MR SELLO MOTAU: Mr Mpumelo Maseko, the Deal Team Leader.
16 February, I was invited to a meeting by the Tirisano Partners transaction advisors with the heading termed ETG Check out Debrief.

In that meeting Kingdom Mugadza informed me that the PIC decided to proceed with the transaction alone. I expressed my
20 disappointment with the stance and he informed me that I should personally speak to Dr Matjila which I agreed to do.

On 7 March 2016, I arranged an introductory meeting between the chairman of ETG who was visiting from Tanzania and Dr Matjila with various people from ETG and PIC present.

The meeting was very cordial and discussion around Corporate

Investment Social Programmes in their countries of operations and in the rest of continent, as well as how this have impacted on ordinary poor rural farmers in those countries where ETG operates.

We also discussed our observations on the positive impact ETG has on emerging farmers which we observed when we visited Malawi and Mozambique and we are very excited to bring some of this experience to local rural black farmers to South Africa.

It was also proposed that \$15 million Farms Development Private Equity Fund be formed to help rural farmers grow and supply ETG
10 through the value chain.

Furthermore, ETC and PIC both agreed to contribute equally to this fund. To the best of my knowledge this fund was never implemented after the transaction's closure and remains outstanding.

ADV JANNIE LUBBE SC: And during this discussions did you take part in it?

MR SELLO MOTAU: With the chairman. Yes, I did take part in it.

ADV JANNIE LUBBE SC: Did anybody tell you there that you are not welcome anymore?

MR SELLO MOTAU: Yes, I received an SMS, fifteen minutes before
20 the meeting took place to say that the CEO wants me to see the chairman alone and I should not attend. And I said: Are they going to meet the two of them only or they are going to meet with the team? They said: No, I think you are the only one who was not invited here.

So I found it odd and I said to the guy: I am already in the building and I am with the ETG Team. So I will attend which I did and

gave my input.

ADV JANNIE LUBBE SC: Thank you. Can we then move to phase 3?

MR SELLO MOTAU: A Pillar to Post is a phase from March 2016, 2017, 2018, 2019. Essentially that is what has been happening, trying to understand why the equity stake has not been allocated.

Several meetings with Dr Dan. Four, at least. And as many meeting with ETG on the allocation of just to Theko.

ADV JANNIE LUBBE SC: During these meetings with Dr Matjila, did he explain or tell you advise you that why come that you are not
10 involved anymore or that you have been taken out?

MR SELLO MOTAU: The first meeting took place at their offices on 27th July and in that meeting he said to me that: Look, when the transaction was presented to PMC2, Theko was not part of the submission. I am on paragraph 87, Commissioner.

Theko was not part of the submission. As a result, he did not want to interfere with the workings of the Deal Team. However, he advised me to engage with the Deal Team and request them to rectify this situation.

Had various meetings with Deal Team and ETG but this yielded
20 no results. That is basically after July 2016. I had another meeting on 15 December 2016. Paragraph 89.

ADV JANNIE LUBBE SC: Paragraph 89, yes.

MR SELLO MOTAU: Which was cancelled but rescheduled for 26 January 2017 to discuss the allocation of shares and then Dr Dan obviously committed to follow up and did in due course.

Nothing happened during this time and basically spoke to every single one, ETG, PIC Deal Team, Masekesa, Rajdhar. They always said: Talk to this one or talk to that one. And nothing happened.

So I requested another meeting which took place on 20 June 2017 and the same thing. I told him: Look, I have been send from pillar to post. These guys are playing hide and seek. What is happening?

He said: Look, I will try and resolve it. But it became
10 apparent at some point that these guys were trying to spread some mis-information about the actual deal originator. I do not know why.

From my further discussions from the deal leader, Mpumelo Maseko in an attempt to get to the bottom of this, he informed me that during the IC meeting the transaction was well received by the committee, members and they were generally complimentary to the structure, strategy feed, to the rest of the continent and the thoroughness of the submission.

When the IC approved the transaction with the condition that the Executive Committee will allocate 10% to a strategy partner will be
20 identified within the six months of financial closure by the PIC executives.

He further mentioned that one of the members of the IC Inquiry is included in the ESG report as a strategy partner as the PIC Team was requesting the Executive Committee to allocate 10% to a strategic partner. That is paragraph 96.

According to him a response from the team that an old template was used on a different transaction with Theko and the team forgot to remove Theko from that template.

ADV JANNIE LUBBE SC: That is basically just a lie. Is that correct?

MR SELLO MOTAU: That is correct. At that stage, I have never been involved in any transaction with PIC as a potential shareholder.

Mpumelo said that he tried to clarify that Theko's involvement in the transaction from inception by the chairman of IC was not willing to entertain the discussion. That continued and then continued to sum
10 up the deliberations with the conditions of introducing another strategic partner within six months of financial closure.

ADV JANNIE LUBBE SC: Do you know who was the chair of that...?

MR SELLO MOTAU: Roshan Morar.

ADV JANNIE LUBBE SC: He was also the deputy chair of the board at the time, if I remember correctly.

MR SELLO MOTAU: That is correct.

ADV JANNIE LUBBE SC: Roshan Morar, Mr Commissioner.

MR SELLO MOTAU: So the road to financial closure took place September 2017 because of the operations on the rest of the continent.
20 The deal had to go to COMESA, Competition Commission.

Once I learned, after looking at the website, that the deal has been approved, I basically met with Wellington who informed me that the deal has been approved. I was celebrating. Everybody was being congratulated on being a very good deal originator.

7 November 2017 I wrote an email to Dr Dan titled ETG Matter.

ADV JANNIE LUBBE SC: This is paragraph 98 of your statement?

MR SELLO MOTAU: 98. Wherein I indicated to him that I have been trying to contact him on his mobile phone to no avail. I informed him that the ETG matter remains unresolved despite several meetings with ETG and the PIC Team.

I stressed to him that - he had requested the Deal Team and ETG to resolve the matter, but I have been made to run from pillar to post with no results.

Consequently, I requested a meeting with him to find a solution
10 to the impasse. A copy the email is hereto attached as ETG5. 1
December 2017 I received an email from his PA stating that she had
scheduled a meeting between myself and Dr Dan on the 15th December
2017 at ten.

This meeting was subsequently cancelled and when I followed up with
the PA, she undertook to send me a revised schedule. She explained
that Dr Dan was involved in a series of meetings due to developments
regarding the Steinhoff transaction.

On 19 December 2017 I again followed up with the PA to ask for the
next meeting. I received a meeting invite, scheduling the meeting for
20 19 January 2018 between two and three. I immediately accepted the
invite.

ADV JANNIE LUBBE SC: Can I just pause there? I think you refer to
in paragraph 100 on 19 December 2017, I again followed up.

MR SELLO MOTAU: Ja.

ADV JANNIE LUBBE SC: But in the next sentence you referred to

January 2018. Is that 2017 or 2018?

MR SELLO MOTAU: That is 2018.

ADV JANNIE LUBBE SC: A year later?

MR SELLO MOTAU: No, no.

ADV JANNIE LUBBE SC: Oh, sorry.

MR SELLO MOTAU: So on 19 January 2018 I met with Dr Dan at Menlyn Main to discuss allocation of shares. Once again I told him that the PIC Team have not allocated the shares as per the time sheet and resolved the matter as previously requested to do so.

10 I appraised him that it appears that we are likely to be excluded considering the run around being given. He once again reassured me that the PIC will do the right think and allocate the shares to Theko and encouraged us to include a broad based structure in the shareholding.

He further advised that it was fair and reasonable for the PIC to also paying origination fees for the portion that we did not own because they are now the majority shareholder.

He noted my request and said that I should rather raise the issue with ETG. He also suggested that I write a letter to the
20 Executive Head of Development Investments, Mr Royith Rajdhar and copy him.

On 23 January 2018 I wrote the letter as requested by Dr Matjila. Firstly congratulated the team on the successful conclusion of the acquisition of 49% of ETG equity stake.

Furthermore I pointed out that we had previously agreed

during the implementation of the transaction that PIC would conclude the transaction on its initially and allocate the 10% later.

Given that this phase has been concluded and financial closure reached, Theko would like to move forward with the implantation of phase 2 of the transaction, being the allocation of the 10% of the 49%.

I also stated in the letter that I wanted to follow up on the implementation of the Agricultural Development Private Equity Fund. In conclusion, I requested him to advise when we can meet. I requested
10 Mr Rajdhar when we can meet with the relevant team members to implement the next phase of the transaction. A copy of this letter is annexed here to ETG6.

25 January 2018 I received an email from the PIC Deal Team requesting additional information for the purpose of implementing the 10% equity state in the transaction. This email is attached hereto and marked ETG7.

ADV JANNIE LUBBE SC: It would seem then at that stage you were again on board.

MR SELLO MOTAU: Yes, I think they were busy implementing. This
20 requested information was provided. Following the submission of the information as requested, Dr Matjila's executive assistant arranged a meeting between Theko and Tirisano Partners, the PIC transaction advisor on 6 March 2018 at four o'clock at Melrose Arch.

In the meeting Tirisano was presented by Kingdom Mugadza who informed me that the shareholding structure for the implementation

of the transaction has changed.

In the revised shareholding structure Theko will now be allocated 1% and then the rest of the 9% equity stage shall be allocated to a new black economic empowerment consortium which Tirisano was currently working on formulating.

We informed them that the revised shareholding structure was not acceptable and since it has not been... Sorry. To Theko since it was not in the shareholding structure which was reflected in the time sheet signed by all transacting parties.

10 Furthermore, we participated in due diligence valuation of this transaction and incurred significant costs on the ground that we are going to be funded by the PIC on the ETG transaction in order to acquire the shares.

The meeting was very acrimonious and I informed him that I do not agree with the revised shareholding approach in allocating the shareholding.

Furthermore, I advised him that I was agreeable to setting up a broad based structure together with PIC that included women in the majority which may include some executives and staff members at ETG
20 and therefore I did not understand the rationale of revising the structure once again.

As a result of my objection to the revised shareholding allocation of 1% to Theko, proposed by Kingdom Mugadza, allocation process started by the PIC was again halted.

We were again further marginalised and we did not receive any

transaction updates or communication in relation to the transaction from thereon. We wrote several emails to the PIC Team but received no replies. Copies of these emails are available, if needed.

On 6 July 2018 I secured another meeting with Dr Matjila who informed me that he was surprised the PIC Deal Team had not implemented the transaction as per the time sheet.

He eluded to me that there was some complication in the transaction since certain external parties supported by people internally wanted ETG shares to be allocated to them.

- 10 Once again he undertook to follow up on the matter. However, at that time he was already in the process of defending himself against the allegations levelled against him by James Ngo. I did not hear anything further from Dr Matjila but continued to write to the PIC Deal Team to request finalisation of the matter but no responses came forth.

ADV JANNIE LUBBE SC: Did they not even respond to your letters?

MR SELLO MOTAU: No acknowledgements. Nothing, Commissioner. So I was worried that they may be talking to other parties with the view of implementing this phase of the transaction to our exclusion.

- 20 I then sent emails on 12, 25 July 2018, 13 August with no replies or acknowledgements. We received a reply to our email dated 9 October 2018 from Mpumelo Maseko.

He responded and repudiated our claim for the shares for the first time formally. A copy of this email is attached hereto as ETG8.

ADV JANNIE LUBBE SC: Did he provide any reasons for this stance?

MR SELLO MOTAU: The reason was that we did not have any

agricultural experience in the value chain. I said to him: Does it mean that everybody who gets funded by the PIC has got sector experience? And he said I must discuss that with his superiors.

I can skip 111. On 112, I said to him: You know, we pointed out in the due diligence review that the weaknesses, if any, in this transaction revolved around corporate governance, risk management, financial reporting and those are the areas that we are very competent in, rather than the lack of expertise in the fertiliser value chain, as eluded by him.

10 I further inquired from him whether all parties funded by the PIC possessed sector experience. Again, I reached out to the Head of Development Investment of the PIC, Royith Rajdhar who referred me to Dr Matjila.

A meeting was setup with Dr Matjila on 17 December 2018 but it never took place. On 23 January 2019 I wrote again to the Head of Development Investments at the PIC, referring to my previous letter of January 2018 and other discussions held with the PIC regarding the allocations of equity stake.

20 I reminded him that Theko originated the deal and approached PIC for funding as far back as 2015. We were involved in all stage of the due diligence and valuation and presentations.

Furthermore, I indicated to him that it was agreed between Theko and PIC that the shareholding would be allocated after competition allocation approval.

The agreed timeline was supposed to happen within six months

of financial closure which happened in November 2017. Notwithstanding that, we are still waiting for the matter to be finalised. So this letter I have attached here as Annexure ETG9.

On the same day, Mr Rajdhar responded to my letter and stating that Mpumelo Maseko will set up a meeting with us. Several meetings were set up and cancelled at short notice and no meetings ever took place and this matter remains outstanding.

The last scheduled meeting between us and the PIC took place on 3 April but this was also cancelled at short notice and never
10 rescheduled.

I spoke to Mr Rajdhar telephonically during early May 2019 and he told me that the PIC was in the process of disposing its stake in ETG. I asked when the allocation of shares to us will take place and he told me he was not sure but that he will speak to ETG and revert.

On 8 May, election day, I met the ETG Team and they informed that PIC was approached by one of the original suitors of ETG who was in the middle of a due diligence review in connection with the proposed disposal PIC's stake in ETG and a transaction was eminent.

In conclusion. I humbly request the Commission of Inquiry to
20 deal with the powers of the PIC, PIC Deal Team and Executive Team to the extent that those teams can decide who should be a promotor or originator of a transaction that has already been submitted to the PIC by a sponsor.

It is concerning that the PIC can express interest in a transaction, go as far as conducting due diligence, FICA processes,

getting necessary internal approvals and at a later stage, on their own discretion, decide to remove a sponsor and include their preferred sponsor.

If they do not believe that a sponsor has experience in a particular sector but the transaction fits in with their strategy, they should rather be advised on developed skills in those areas, rather beef up or develop skills rather than discriminate and disempower by removing them completely at the end of a transaction. In circumstances where the sponsor had invest insignificantly in a transaction did not appeared to be sufficient checks on balances or guidelines on the PIC processes regarding their discretion to choose who gets involved in deals and who is not. This opens the door for favouritism and gate keeping. I believe there should be a clear policy guideline in relation to the subject matter rather than for it to be left at management discretion as currently is practised at the PIC. I trust this submission will be of assistance for the Commission. The evidence leader is free to contact us should the Commission require further information or clarity in this regard. I thank the Commission for giving us the opportunity to clarify some of the issues raised in the James Noko email. And to also share our experiences at the PIC.

ADV JANNIE LUBBE SC: Thank you. Mr Commissioner, that concludes the evidence of Mr Motau.

MS GILL MARCUS: We've gone through it very quickly and we will go through it more carefully so thank you very much for that. But do you know who in the end substituted for you in that either 9% or as the

sponsor?

MR SELLO ADSON MOTAU: That has not been concluded because they realised that because we refused to go away. If they went ahead and allocate it to somebody, that deal was going to be questioned. And so they decided to just hold on and do nothing about it.

MS GILL MARCUS: So that 10% is still missing from this potential sale back to of somebody else to buy the PIC shares for ETG or are they going to actually sell the whole lot?

MR SELLO ADSON MOTAU: They're going to sell the whole lot.

10 **MS GILL MARCUS:** The whole lot.

MR SELLO ADSON MOTAU: Including the 10%, yes.

MS GILL MARCUS: Including the 10%. Thank you.

MR EMMANUEL LEDIGA: Two questions here. The 1% fee on the first transaction on the Karan Beef. Were you planning to share it with RMB or sort of it was Theko's fee?

MR SELLO ADSON MOTAU: So the total fees on Karan would amount to about 80 million rand including vat. The time based fees being Deloitte and Cliffe Dekker amount to maybe just around 15 million rand including vat. And then RMB and Theko would share the balance as a
20 success fee which is I think just under 1% combined for the two of them.

MR EMMANUEL LEDIGA: Okay. So meaning the plan is to share the 30 million rand?

MR SELLO ADSON MOTAU: Yeah, with RMB.

MR EMMANUEL LEDIGA: Which is left from the 80 million rand.

MR SELLO ADSON MOTAU: No, there's 60 left from-

MR EMMANUEL LEDIGA: 60 left from the- oh, you know from the 80.

So it's a sort of 80 minus the 20 for the tax and the other stuff and then 60 is left, isn't it?

MR SELLO ADSON MOTAU: That's correct, yeah.

MR EMMANUEL LEDIGA: Which is shared half way, I would guess.

MR SELLO ADSON MOTAU: Yes.

MR EMMANUEL LEDIGA: On the second point the 10%, I find this very staggering that you've spend what two years three years.

10 **MR SELLO ADSON MOTAU:** Interesting. Its three and a half years.

MR EMMANUEL LEDIGA: Yes. And do have any idea why they are doing this to you?

MR SELLO ADSON MOTAU: I don't know, but I think it could be that they wanted to allocate and it's my opinion, those shares to somebody who's more favourably disposed to them. I'm not sure.

MR EMMANUEL LEDIGA: And what's the value of that 10% in rand terms?

20 **MR SELLO ADSON MOTAU:** The total investment, I speak under correction, was about 190 million dollars. 10% is 19 million dollars round about.

MR EMMANUEL LEDIGA: That's quite a lot. Yeah. Do you...(intervention)

MR SELLO ADSON MOTAU: It's a...(intervention)

MR EMMANUEL LEDIGA: Continue.

MR SELLO ADSON MOTAU: Sorry Commissioner. But it's a loan so

obviously the performance depends on how your service interest and things like that. So take the loan plus interest on disposal basically either there'll be profit or a loss or a slight loss if what they do on the price negotiated.

MR EMMANUEL LEDIGA: And on that 10% was there something written down maybe about the agreement about this?

MR SELLO ADSON MOTAU: Yeah, we went through the full investment process. We submitted a proposal, we given a letter of expression of interest. We then were given a term sheet- sorry, a engagement letter
10 we guaranteed the due diligence course. And then from there we signed a term sheet with the PIC. So it went through the whole formal process.

MR EMMANUEL LEDIGA: Legal action, why couldn't you take legal action?

MR SELLO ADSON MOTAU: I'll answer that maybe using an analogy. When you sell electricity meters, you don't sue Eskom.

MR EMMANUEL LEDIGA: There is then the normal thing that people are scared of the PIC. So they cannot take action against the PIC.

MR SELLO ADSON MOTAU: That's correct.

20 **MR EMMANUEL LEDIGA:** Alright yeah, okay. Thanks but yeah, it's quite a difficult issue this one, it's staggering.

CHAIRPERSON: Yes, thank you Mr Motau. I certainly am not sure whether we are in a position to deal with your request as it were or whether this really is a civil matter where you should approach the courts. But I am making no judgement on it; it's just talking from top of

my head at the moment. But we will look at your matter and if we don't deal with it in the way that you wish we could, don't hold that against us. But we'll have a look at it. Thank you so much for your time. It's quite a comprehensive presentation that you have made before us and we are really grateful for it.

MR SELLO ADSON MOTAU: Thank you Commissioner.

CHAIRPERSON: If it were to happen that we need some more clarity on certain issues, I hope you will make yourself- in fact I think you do say that at the end of your statement.

10 **MR SELLO ADSON MOTAU:** That's correct, I'm always available Commissioner.

CHAIRPERSON: Yes, thank you very much.

ADV JANNIE LUBBE SC: Thank you, Mr Commissioner. That concludes the business for the day.

CHAIRPERSON: We'll then adjourn until tomorrow morning at 10h00.

INQUIRY ADJOURNS TO 22 MAY 2019